



[Docket No. FR-6261-N-01]

Allocations, Common Application, Waivers, and Alternative Requirements for Community Development Block Grant Disaster Recovery Grantees; Electrical Power Systems in Puerto Rico and the U.S. Virgin Islands

AGENCY: Office of the Assistant Secretary for Community Planning and Development, HUD.

ACTION: Notice.

SUMMARY: On April 10, 2018, HUD allocated nearly \$28 billion in Community Development Block Grant disaster recovery (CDBG-DR) funds appropriated by the Further Additional Supplemental Appropriations for Disaster Relief Requirements Act, 2018. HUD allocated \$10.03 billion for the purpose of addressing unmet needs from disasters that occurred in 2017; \$2 billion for enhanced or improved electrical power systems in Puerto Rico and the U.S. Virgin Islands; and \$15.9 billion for mitigation activities. This notice governs the use of the \$2 billion CDBG-DR allocation for enhanced or improved electrical power systems in Puerto Rico and the U.S. Virgin Islands.

DATES: Applicability Date: **[INSERT DATE 5 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER.]**

FOR FURTHER INFORMATION CONTACT: Jessie Handforth Kome, Director, Office of Block Grant Assistance, Department of Housing and Urban Development, 451

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I. Overview and Policy Objectives

The Further Additional Supplemental Appropriations for Disaster Relief Requirements Act, 2018 (Division B, Subdivision 1 of the Bipartisan Budget Act of 2018), (P.L. 115-123 approved February 9, 2018) (the “Appropriations Act”), made available nearly \$28 billion in Community Development Block Grant disaster recovery (CDBG-DR) funds. Of this amount, the Appropriations Act directed HUD to allocate not less than \$2 billion for electrical power system enhancements and improvements for Puerto Rico and the U.S. Virgin Islands (USVI). This notice establishes requirements for necessary expenses of electrical power system enhancements and improvements (“electrical power system improvements”) in the most impacted and distressed area as defined by HUD in section II of this notice and as previously identified in the allocation methodology published by HUD in the August 14, 2018 **Federal Register** (83 FR 40314, 40323).

In 2017, Hurricanes Irma and Maria damaged significant elements of the electricity systems in Puerto Rico and the USVI. Following the hurricanes, five months of repairs were required in order to restore power to the USVI, and approximately eleven months of repairs were

needed to restore power to Puerto Rico. CDBG-DR funds for electrical power system improvements provide a unique and significant opportunity for these grantees to carry out strategic and high-impact activities to address necessary expenses and mitigate disaster risks to their electrical power systems, improve system reliability, resiliency, efficiency, sustainability and address each system's long-term financial viability (electrical power system and electrical power system improvements are defined in section V.A.8.a. in this notice). The Department seeks to maximize the impact of these CDBG-DR funds by encouraging the formation of public-private partnerships, partnerships with local, community and neighborhood organizations, and through enhanced coordination with other Federal programs. In the action plan governing the use of these funds, grantees are also required to describe how the funds will be used to address the needs of vulnerable populations, protected classes, and underserved communities, how the funded activities primarily benefit low- and moderate-income persons, and how the planned improvements will be designed and implemented to address the impacts of climate change.

The use of CDBG-DR funds for electrical power system improvements requires careful planning, robust oversight, and coordination with other Federal disaster recovery, mitigation, and sustainability efforts to enhance the resiliency of grantee's electrical power systems, as an integral component of the grantee's energy infrastructure. The Department places great focus on and will give increased attention to the financial and operational capacity of each grantee's subrecipients and the departments and divisions of the grantee that may receive funds, including public utilities that currently operate and maintain each grantee's electrical power system. As described in section V.A.1.b.(2), grantees must identify any management and operational reforms that have been or will be implemented to improve the outcomes associated with the use of CDBG-DR funds for electrical power system improvements. The Administration also seeks to encourage private, community, and philanthropic sector investments in electrical power system improvements, and to maximize the long-term benefits of this CDBG-DR funding to each grantee's jurisdiction.

II. Allocation

The Appropriations Act provides that grants shall be awarded directly to a State, local government, or Indian tribe at the discretion of the Secretary. To comply with statutory direction that funds be used for disaster-related expenses in the most impacted and distressed areas, HUD has identified the most impacted and distressed areas based on the best available data for all eligible affected areas. A detailed explanation of HUD's allocation methodology was previously published in HUD's August 14, 2018 **Federal Register** notice at 83 FR 40323. For Puerto Rico and the USVI, all components of each jurisdiction are considered most impacted and distressed for purposes of the allocation identified in Table 1.

TABLE 1 - ALLOCATIONS FOR ELECTRICAL POWER SYSTEM ENHANCEMENTS AND IMPROVEMENTS UNDER PUBLIC LAW 115-123

Disaster No.	Grantee	Electrical Power System Allocation under Public Law 115-123
4339	Commonwealth of Puerto Rico	\$1,932,347,000
4340	U.S. Virgin Islands	\$67,653,000

III. Use of Funds

As required by the Appropriations Act, prior to HUD's obligation of the funds to the grantee, a grantee shall submit a plan to HUD for approval detailing the proposed use of all funds. The action plan submitted in response to this notice must describe uses that (1) are electrical power system improvements and satisfy all requirements for electrical power system improvement activities as described in V.A.8.; and (2) meet the criteria for a national objective, as established by this notice.

Section V.A.8. of this notice establishes a waiver and alternative requirement that creates electrical power system improvements as a CDBG-DR eligible activity. As described in section V.A.2.a.(1) of this notice, in the action plan, a grantee must assess the unmet needs for the

enhancement or improvement of their respective electrical power system. The unmet needs assessment must inform the action plan and guide the development and prioritization of planned activities to improve each grantee's electrical power system. The action plan must include the criteria to be used by the grantee to prioritize the expenditure of CDBG-DR funds identified in this notice for the specific components of its electrical power system and describe how the use of these CDBG-DR funds will improve the cost-effectiveness, reliability, resilience, efficiency, sustainability, and long-term financial viability of its electrical power systems.

Puerto Rico is subject to the requirements of the State CDBG program, as modified by applicable waivers and alternative requirements. Section 102(a)(2) of the HCDA defines "state" to include the Commonwealth of Puerto Rico (42 U.S.C. 5302(a)(2)). HUD waives the provisions of 24 CFR part 570, subpart F to authorize the USVI to administer its CDBG-DR allocation in accordance with the regulatory and statutory provisions governing the State CDBG program, as modified by this notice. This includes the requirement that the aggregate total for administrative and technical assistance expenditures by the USVI must not exceed 5 percent of any CDBG-DR grant made pursuant to the Appropriations Act, plus 5 percent of program income generated by the grant.

Funds allocated pursuant to this notice shall not be subject to previous notices that govern CDBG-DR or CDBG Mitigation (CDBG-MIT) funds awarded to Puerto Rico or the USVI. The use of other CDBG-DR funds or CDBG-MIT funds, allocated pursuant to other notices for electrical power system improvements, shall be subject to the requirements of the notices governing the use of those funds and to the requirements established in section V.B.4 of this notice.

All references in this notice pertaining to timelines and/or deadlines are in terms of calendar days unless otherwise noted.

IV. Overview of Grant Process

The grant process outlined below aligns with the typical process for awarding CDBG-DR grants. To begin expending CDBG-DR funds pursuant to this notice, the following steps are required:

- Grantee develops or amends its citizen participation plan for disaster recovery to include the grant for electrical power system improvements in accordance with the requirements in section V.A.3 of this notice.
- Grantee consults with stakeholders, including the required consultation with the Federal members of the Energy Technical Coordination Team (TCT) described in section V.A.2.e.(1) of this notice, affected local government public utilities, rural electrical cooperatives, regulators, commercial and industrial users of the system, residential customers and public interest groups representing residential customers of the system and others pursuant to section V.A.6 of this notice.
- Grantees under this notice have previously submitted materials in support of the Department's certification of the proficiency of its financial controls and procurements processes and the adequacy of its procedures to prevent any duplication of benefits as defined by section 312 of the Robert T. Stafford Disaster Relief and Emergency Assistance Act (Stafford Act), 42 U.S.C. 5155, to ensure timely expenditure of funds, maintain a comprehensive website regarding all assisted mitigation activities, and detect and prevent waste, fraud, and abuse of funds for purposes of its CDBG-MIT grant. Accordingly, as described in section V.A.1.a., for CDBG-DR grants governed by this notice, HUD will rely on the grantees' submissions and certifications in support of the CDBG-MIT certifications, provided, however, that each grantee shall be required to submit updates to reflect any material changes in its certification submissions, as necessary. Grantees must submit the required information within 60 days of the applicability date of this notice.
- Grantee publishes its action plan for electrical power system improvements on the

grantee's required disaster recovery website for no less than 45 calendar days to solicit public comment and convenes not less than two public hearings on the proposed plan. The grantee may convene virtual hearings in lieu of in-person hearings, pursuant to section V.A.3.b. of this notice.

- Grantee responds to public comments and submits its action plan within 120 days of the applicability date of this notice (which includes Standard Form 424 (SF-424) and certifications), its implementation plan and capacity assessment in accordance with the requirements in section V.A.1.b, and projection of expenditures and outcomes to HUD in accordance with V.A.2.g.
- Grantee may begin to enter activities into the Disaster Recovery Grant Reporting (DRGR) system before or after submission of the action plan to HUD. Any activities that are changed as a result of HUD's review must be updated once HUD approves the action plan.
- HUD reviews (within 60 days from the date of receipt) the action plan according to criteria identified in this notice, and either approves or disapproves the plan.
- HUD will send an action plan approval letter, grant conditions, and an unsigned grant agreement to the grantee. If the action plan is not approved, HUD will notify the grantee of the deficiencies. The grantee must then resubmit the action plan within 45 days of the notification.
- Grantee must sign and return the grant agreement to HUD.
- HUD will sign the grant agreement and establish the grantee's CDBG-DR line of credit amount to reflect the total amount of available funds. Grantee posts the final HUD-approved action plan on its official website.
- Grantee enters the activities from its approved action plan into the DRGR system if it has not previously done so and submits its DRGR action plan to HUD (funds can be drawn from the line of credit only for activities that are established in the DRGR system).

- Grantee may draw down CDBG–DR funds from its line of credit after the Responsible Entity completes applicable environmental review(s) pursuant to 24 CFR part 58 or adopts another Federal agency’s environmental review as authorized under the Appropriations Act, and, as applicable, receives from HUD the Authority to Use Grant Funds (AUGF) form.
- Substantial amendments are subject to requirements in V.A.2.d., including a 30-day public comment period and posting the substantial amendment to the grantee’s website followed by a 60-day review period for HUD.

V. Applicable Rules, Statutes, Waivers, and Alternative Requirements

This section of the notice describes requirements established by the Appropriations Act, as well as waivers and alternative requirements that apply to the CDBG-DR funds for electrical power system improvements. These waivers and alternative requirements provide flexibility in program design and implementation to support the grantees’ prudent implementation of activities to address necessary expenses and mitigate disaster risks to their electrical power systems, improve system reliability, resiliency, efficiency, sustainability and address each system’s long-term financial viability, while ensuring that statutory requirements are met. For each waiver and alternative requirement, the Secretary has determined that good cause exists and that the waivers and alternative requirements are not inconsistent with the overall purpose of title I of the HCDA.

The Appropriations Act authorizes the Secretary to waive or specify alternative requirements for any provision of any statute or regulation that the Secretary administers in connection with the obligation by the Secretary, or use by the recipient, of these funds, except for requirements related to fair housing, nondiscrimination, labor standards, and the environment. HUD also has regulatory waiver authority under 24 CFR 5.110, 91.600, and 570.5.

Grantees may request additional waivers and alternative requirements from the Department as needed to address specific needs related to their electrical power system improvement activities. Grantee requests for waivers and alternative requirements must be

accompanied by relevant data to support the request and must demonstrate to the satisfaction of the Department that there is good cause for the waiver or alternative requirement. Grantees must work with their assigned HUD CPD representative to request additional waivers or alternative requirements and such waivers and alternative requirements shall be subject to approval by HUD headquarters. Except when noted, the waivers and alternative requirements described below apply only to CDBG-DR funds subject to the requirements of this notice. Waivers and alternative requirements must be published in the **Federal Register** and are effective five (5) days after publication.

Except as described for CDBG-DR funds, statutory and regulatory provisions governing the State CDBG program shall apply to both Puerto Rico and the USVI including but not limited to, the principle of maximum feasible deference as provided at 24 CFR 570.480. Statutory provisions for the State CDBG program (title I of the HCDA) can be found at 42 U.S.C. 5301 et seq. State CDBG regulations can be found at 24 CFR part 570. References to the action plan in these regulations refer to the action plan required by this notice.

V.A. Grant Administration and Action Plan Requirements.

V.A.1. *Pre-award evaluation of management and oversight of funds.* HUD plans to work with other Federal agencies and the grantee to closely consult with and provide coordinated federal technical assistance to the grantee in its planning and implementation of all aspects of the electrical power system improvements to be funded with CDBG-DR grants described in this notice. This coordinated Federal technical assistance aligns with the view that these electrical power system improvements by grantees will require a high level of interaction between HUD, the grantee, and other Federal agencies in order to ensure long-term performance and compliance. In establishing an alternative eligible activity for electrical power system improvements in section V.A.8.a. of this notice, HUD recognizes the unique nature of the activities to be funded with this allocation, the extent to which implementation of this activity is dependent upon each grantee's public utility, and the financial management and program risks to

grantees that are presented by the on-going operational and financial challenges of their respective public utilities. Accordingly, HUD will also give increased attention to the financial and operational capacity of each grantee's subrecipients, subgrantees, and any other departments and divisions of the grantee that will carry out activities funded with this grant, including each of the public utilities that currently operate and maintain each grantee's electrical power system.

Consistent with 2 CFR part 200, HUD will use grant conditions to reduce risk, to contribute to improved outcomes in the use of this CDBG-DR funding, and to help strengthen grantee management practices and improve the grantee's capacity to respond to future disasters. Among the conditions which may be established are requirements for notifying HUD of the planned disposition of components of the electrical power system acquired or improved with CDBG-DR funds and for the management of any program income resulting from such disposition and standards for the procurement of electrical power system improvements, including those established by the U.S. Department of Agriculture's Rural Utility Service.

As electrical power system improvements necessarily rely on the grantee's public utility, and for grantees that are considered by HUD to have "unmitigated high risks," that impact their ability to carry out large-scale projects, HUD, in consultation with the U.S. Department of Treasury, may consider possible grant conditions. These grant conditions may include but are not limited to requiring the grantee to provide periodic reports on how the expenditure of CDBG-DR funds is contributing to the financial stability of the public utility including steps the utility is taking (e.g., cost-cutting measures, increases in operational efficiency, increases to customer base and investments of public utility funds in the system).

The Department may, based on its assessment of risk, restrict the availability of funds until such time as various grant conditions are met by a grantee. Grantees are reminded that HUD may, at any time, establish new grant conditions based on the risk arising from the performance of a grantee or its subrecipients or may pursue remedies based on performance consistent with subpart O of the CDBG regulations (including corrective and remedial actions in

24 CFR §§ 570.910, 570.911, and 570.913) or under subpart I of the CDBG regulations at 24 CFR part 570 in accordance with the waiver and alternative requirement in V.A.20.

V.A.1.a. *Certification of financial controls and procurement processes, and adequate procedures for proper grant management.* The Appropriations Act requires that the Secretary certify, in advance of signing a grant agreement, that the grantee has in place proficient financial controls and procurement processes and has established adequate procedures to prevent any duplication of benefits as defined by section 312 of Stafford Act, 42 U.S.C. 5155, to ensure timely expenditure of funds, maintain a comprehensive website regarding all disaster recovery activities assisted with these funds, and detect and prevent waste, fraud, and abuse of funds. Sections V.A.1.a. and VI.1.k. of the August 30, 2019 CDBG–MIT **Federal Register** notice (84 FR 45844-45 and 45869) required CDBG-MIT grantees to provide submissions that offer evidence that its controls, processes, and procedures are proficient and adequate, and a related certification from the grantee to the Secretary. To enable the Secretary to make this certification, HUD will rely on the grantee’s submissions and certifications to the Secretary previously provided for the grantee’s CDBG-MIT grant, provided, however, that HUD’s approval will be conditioned on the requirement that the grantee must update its previous submissions to reflect any material changes.

If this CDBG-DR grant is to be administered by an agency that does not administer a grantee’s CDBG-MIT grant, the administering agency for this CDBG-DR grant must submit the documentation for the certification of financial controls and procurement processes, and adequate procedures for proper grant management as described in Sections V.A.1.a. of the August 30, 2019 CDBG–MIT **Federal Register** notice (84 FR 45844-45).

Grantees must submit the required information within 60 days of the applicability date of this notice.

V.A.1.b. *Implementation plan and capacity assessment.* CDBG-DR funds typically require grantees to adopt new roles and responsibilities within their organization and to establish

new working relationships with other entities external to the organization. The use of CDBG-DR funds for electrical power system improvements presents unique risks for grantees, requiring enhanced levels of technical expertise and close coordination among multiple agencies of the grantee, federal agencies, public utilities, local governments, and other stakeholders. Before signing a grant agreement, HUD requires each grantee to demonstrate that it has sufficient capacity to manage these funds and the associated risks.

Evidence of grantee management capacity must be provided through the grantee's implementation plan and capacity assessment submitted with the grantee's action plan. These submissions must meet the criteria in (1) and (2) below. A grantee has sufficient management capacity if it submits documentation showing that each of the following criteria are satisfied:

(1) Timely information on applications. A grantee has adequate procedures to enable applicants to determine the status of their applications for CDBG-DR assistance, at all phases, if its procedures indicate methods for communication (i.e., website, telephone, case managers, letters, etc.), ensure the accessibility and privacy of individualized information for all applicants, indicate the frequency of applicant status updates, and identify which personnel or unit is responsible for informing applicants of the status of CDBG-DR applications.

(2) Implementation plan. To enable HUD to assess risk as described in 2 CFR 200.206, the grantee must submit an implementation plan to the Department. The plan must describe the grantee's capacity to carry out electrical power system improvement activities, how it will address any capacity gaps, and how agency staff of the grantee that administers other CDBG-DR funds and CDBG-MIT funds will work with other agencies of the grantee that administer the Federal Emergency Management Agency (FEMA) funded mitigation and public assistance funds and other Federally funded activities that support electrical power system improvements. Additionally, grantees must identify any management and operational reforms that have been or will be implemented by the grantee or its planned subrecipients, subgrantees, and any other agencies of the grantee that will carry out a portion of the grant, in order to improve operational

efficiency, accountability, and the outcomes associated with the use of CDBG-DR funds for electrical power system improvements. HUD will determine a plan is adequate to reduce risk if, at a minimum, it adequately addresses (a) through (f) below:

(a) Capacity assessment. The grantee has assessed its capacity to carry out electrical power system improvement activities and has developed a timeline with milestones describing when and how the grantee will address all capacity gaps that are identified. The assessment must include a list of any open CDBG-DR or CDBG-MIT findings by HUD or its Office of the Inspector General and an update on the corrective actions undertaken to address each finding. HUD may include additional requirements in the grantee's grant conditions to prevent similar findings for this grant.

(b) Staffing. The plan shows that the grantee has accurately assessed staff capacity and identified adequate personnel who have documented experience in the timely development and implementation of electrical power system improvements, including in particular, the distribution, substation, and communication components of the system; staff that are responsible for procurement and contract management, including compliance with the regulations implementing Section 3 of the Housing and Urban Development Act of 1968 (24 CFR part 75) (Section 3); staff with experience and capacity in compliance with fair housing and environmental requirements; and personnel responsible for monitoring, quality assurance, and proper financial management. The grantee's staffing plan may include the procurement of external consulting services with expertise in the development and implementation of electrical power system improvements. An adequate plan must also describe the grantee's internal audit function and the extent to which the internal audit function has been enhanced to account for the technical and specialized nature of the electrical power system improvements to be funded, including responsible audit staff reporting independently to the chief elected official or executive officer or governing board of the designated administering entity. To help complete this staffing exercise, grantees may choose to use the "Staffing Analysis Worksheet" available on the HUD

Exchange at <https://www.hudexchange.info/programs/cdbg-dr/toolkits/program-launch/#capacity>.

(c) Internal and interagency coordination. The plan describes how the grantee will ensure effective communication and coordination between different departments and divisions within the grantee's organizational structure and other grantee agencies and governmental entities involved in the design and implementation of electrical power system improvement planning and projects; agencies or divisions responsible for environmental reviews; grantee agencies responsible for the development and implementation of components of the planned electrical power system improvements; local and regional planning as well as other agencies to be engaged by the grantee in order to ensure consistency and the integration of CDBG-DR electrical power system improvements with local and regional planning and development activities. This includes the required consultation with the Federal members of the TCT on the action plan as described in section V.A.2.e.(1) of this notice. In order to illustrate compliance with the requirement at V.A.2.e.(1), each grantee shall document in its implementation plan its required consultations with the Federal members of the TCT and its efforts to coordinate the various sources of federal assistance provided for electrical power system improvements.

(d) Subrecipients, public utilities, and other entities. The implementation plan must describe the criteria to be used by the grantee to evaluate the capacity of all potential subrecipients or other agencies of the grantee that will receive a subaward or otherwise carry out activities funded with this grant, including criteria specific to the designation of any public utility that is anticipated to receive funding to implement electrical power system improvements. These criteria shall include an evaluation of the capacity of subrecipient or other entities to coordinate electrical power system improvements with other infrastructure activities of the grantee.

The plan must also indicate how the grantee will monitor other agencies of the grantee that will administer the funds, how the grantee will enhance its monitoring of subrecipients, other

agencies of the grantee, contractors, and other program participants, how and why monitoring is to be conducted, and which items are to be monitored.

(e) Technical assistance. The grantee's implementation plan describes how it will procure and provide technical assistance for any personnel that the grantee does not employ at the time of action plan submission, and to fill their gaps in knowledge or technical expertise required for successful and timely implementation where identified in the capacity assessment.

(f) Accountability. The grantee's plan identifies the lead agency responsible for implementation of the CDBG-DR grant and indicates that the head of that agency will report directly to the chief executive officer of the grantee.

HUD will monitor the grantee's use of funds for consistency with the action plan, implementation plan and capacity assessment, and whether a grantee meets the performance and timeliness objectives established therein. A material failure to comply with the grantee's approved action plan or implementation plan and capacity assessment will prompt HUD to exercise any of the corrective or remedial actions described in section V.A.20.

V.A.2. CDBG-DR Action Plan waiver and alternative requirement. Requirements for CDBG action plans, in 42 U.S.C. 5304(a)(1), 42 U.S.C. 5304(m), 42 U.S.C. 5306(d)(2)(C)(iii), 42 U.S.C. 5306(a)(1), 42 U.S.C. 12705(a)(2), 24 CFR 91.320, and 24 CFR 91.220, are waived for these CDBG-DR grants. Instead, grantees must submit to HUD a disaster recovery action plan for electrical power system improvements which will describe activities that conform to applicable requirements as specified in this notice. The Secretary may disapprove an action plan as substantially incomplete if it is determined that the plan does not satisfy all the required elements identified in this notice.

V.A.2.a. Action Plan. The action plan must identify the proposed use of all grant funds, including criteria of eligibility to be used by the grantee to prioritize the expenditure of CDBG-DR funds for the specific components of its electrical power system; how the uses address necessary expenses related to disaster relief, long-term recovery, restoration of infrastructure and

housing, and economic revitalization; and how the uses are to be determined to improve the cost-effectiveness, reliability, resilience, efficiency, sustainability and long-term financial viability of electrical power systems.

The use of funds shall be consistent with the electrical power system unmet needs identified by the grantee in its action plan. Funds dedicated for uses not described in accordance with this section will not be obligated until the grantee submits, and HUD approves, an action plan amendment programming the use of those funds, at the necessary level of detail to allow the public and HUD to identify and understand the use of all funds for specific activities. In the unmet needs assessment and in its description of the connection of electrical power system improvements to unmet needs, grantees shall reference any long-term infrastructure plan of the grantee's public utility developed in consultation with the FEMA, for the use of FEMA funds for electrical power system improvements; or with any utility integrated resource plan or other strategic plan adopted by the grantee for the development of its energy infrastructure, as such plans may be amended from time to time. The action plan must consider and incorporate, as appropriate, electrical power system industry standards established by relevant Federal agencies and related bodies, including, but not limited to, requirements set by the USDA Rural Utilities Service (RUS), National Institute of Standards and Technology, and North American Electrical Reliability Corporation. In drafting the action plan, grantees shall consult with the Federal members of the TCT as provided in section V.A.2.e. of this notice. HUD will review and consider the comments from the Federal members of the TCT, obtained by the grantee, on the action plan.

HUD is establishing an additional alternative requirement that grantees shall implement CDBG-DR electrical power system improvement activities in accordance with their action plans and pursuant to the descriptions provided by the grantee in the action plan in response to elements (1) through (12) below. To the extent that the terms of any concessionary agreement or receivership governing a public utility of the grantee are not consistent with the requirements of

this notice, the terms of this notice shall continue to govern the CDBG-DR funds subject to this notice and their use for electrical power system improvements.

(1) Electrical Power System Unmet Needs Assessment. Each grantee must develop an unmet needs assessment to inform the use of CDBG-DR funds for electrical power system improvements. The action plan must include an estimate of unmet needs based on planned electrical power system improvements, including mitigation and resilience measures, that are not likely to be addressed by other sources of funds. Grantees must account for the various forms of assistance available to, or likely to be available for such improvements, using the most recent available data to estimate the portion of need unlikely to be addressed by insurance proceeds, other Federal assistance, or any other funding sources (thus producing an estimate of unmet need). Grantees must cite data sources for the assessment. At a minimum, the unmet needs assessment must: (i) evaluate all aspects of the electrical power system that were damaged by the disaster and that are at greatest risk from future disasters; (ii) estimate unmet needs to ensure that CDBG-DR funds are planned for uses that meet electrical power system needs that are not likely to be addressed by FEMA or other sources of funds by accounting for the various forms of assistance available to, or likely to be available to, the grantee or its subrecipients (*e.g.*, obligated and projected FEMA funds, public utility resources, other grantee funds); and (iii) account for the costs of incorporating mitigation and resilience measures to protect against the anticipated effects of future extreme weather events and other natural hazards and long-term risks and the costs of incorporating improvements to address long term carbon reduction goals.

CDBG-DR funds may be used to reimburse planning and administrative costs for developing the action plan, including the needs assessment, environmental review, and citizen participation requirements. Although the needs assessment for these CDBG-DR funds necessarily differs somewhat from what is conducted by grantees for CDBG-DR allocations provided for housing, infrastructure, and economic revitalization needs, HUD

has developed a Disaster Impact and Unmet Needs Assessment Kit that may be helpful to grantees as a guide through a process for identifying and prioritizing critical unmet needs for electrical power system improvements. The Kit is available on the HUD Exchange website at: <https://www.hudexchange.info/resource/2870/disaster-impact-and-unmet-needs-assessment-kit/>.

In preparing the needs assessment, grantees are advised to review the process and methodology previously used to assess the grantee's unmet infrastructure needs for its recent allocations of CDBG-DR funds for disaster recovery.

Electrical power system improvement needs evolve over time, and grantees must amend the needs assessment and action plan as additional resources become available, including through any additional needs that may be identified through an infrastructure plan developed for the use of FEMA Public Assistance funds for electrical power system improvements, through any utility integrated resource plan for Puerto Rico, and through any equivalent strategy or development plan adopted by the USVI for its energy sector, as such strategy or plans may be amended from time to time.

(2) Connection of Electrical Power System Improvements to Unmet Needs and Expenditures. The grantee must address how the proposed expenditures for each distinct functional component of its planned electrical power system improvements, as identified in the definition in section V.A.8.a.(ii) of this notice, addresses an estimated unmet need identified in its electrical power system unmet needs assessment. For each functional component, the grantee shall also identify the amount of funds to be used as non-federal match for that component.

The grantee's action plan (and subsequent amendments) must include a single chart or table that illustrates, at the most practical level, how all funds are budgeted (e.g., by program, subrecipient, grantee-administered activity, or other category) and that identifies each component of the electrical power system to be funded. The budget shall identify the pre-development, planning, construction, and installation costs of each component; the percentage of funds to be expended for each component; the percentage of funds for each component that are to be

expended as the non-Federal match for other Federal funds; and a timeline for the full expenditure of each system component and for the full grant allocation. Each grantee shall describe how its proposed expenditures are consistent with any infrastructure plan developed by the grantee's public utility in consultation with FEMA for the expenditure of Public Assistance funds for electrical power system improvements, with any utility integrated resource plan adopted by Puerto Rico, and any strategy or development plan adopted by the USVI for its energy sector, as such plans may be amended from time to time.

(3) Long-term Planning Considerations. The grantee must describe how it plans to promote local and regional long-term planning and development as informed by its electrical power system needs assessment.

(4) Coordination of Electrical Power System Improvements and Planned Leverage. Each grantee must describe how it will align its electrical power system improvements with other planned improvements to its other energy systems and its other infrastructure development efforts and foster the potential for additional electrical power system funding from multiple sources, such as leveraging other existing capital improvement projects and the potential for private investment. Grantees must describe how it plans to foster the potential to leverage these CDBG-DR funds with other funding provided through public-private partnerships and by other Federal, State, local, public utility, private, and nonprofit sources to generate more effective and comprehensive mitigation and electrical power system improvement outcomes.

Examples of other Federal sources include funding provided by HUD, FEMA (specifically the Public Assistance Program and the Hazard Mitigation Grant Program), the Economic Development Administration, U.S. Army Corps of Engineers (USACE), the Department of Transportation, and the Department of Agriculture. The grantee must describe how it will seek to maximize the outcomes of electrical power system improvements and the degree to which CDBG-DR funds are effectively leveraged, for example through public-private partnerships or partnerships with local, community and neighborhood organizations and a

commitment of funding by the grantee. The grantee shall identify any leveraged funds for each electrical power system improvement activity in the DRGR system.

(5) Plans to Minimize Displacement and Ensure Accessibility. The grantee must describe how it plans to minimize displacement of persons or entities, and assist any persons or entities displaced through its electrical power system improvement activities. This description shall focus on proposed activities that may directly or indirectly result in displacement and the assistance that shall be required for those displaced. The grantee is reminded that it must take into consideration the functional needs of persons with disabilities in the relocation process. Guidance on relocation considerations for persons with disabilities may be found in Chapter 3 of HUD's Relocation Handbook 1378.0 available on the HUD Exchange website at:

https://www.hud.gov/program_offices/administration/hudclips/handbooks/cpd/13780.

(6) Construction and Resiliency Standards. Each grantee must describe how it plans to:

- (a) emphasize quality, durability, resiliency, energy efficiency and sustainability in its electrical power system improvements;
- (b) promote sound, sustainable long-term recovery planning informed by a post-disaster evaluation of hazard risk, especially construction standards and land-use decisions that reflect responsible floodplain and wetland management and take into account continued sea level rise – this information should be based on the history of FEMA flood mitigation efforts and take into account projected increase in sea level (if applicable) and the frequency and intensity of precipitation events; and
- (c) adhere to the elevation requirements established in section V.B.1. of this notice, if applicable. For grantees addressing flood risks, the grantee must describe how it will document its decision to elevate structures associated with its electrical power system improvements and how it evaluated and determined the elevation to be cost reasonable relative to other alternatives or strategies, such as the demolition of substantially damaged structures with reconstruction of an elevated structure on the same site or infrastructure improvements to reduce the risk of loss of life and property.

(7) Operation and Maintenance Plans. Each grantee must describe its plan for ensuring the long-term operation and maintenance (O&M) of the electrical power system improvements funded with CDBG-DR funds. The grantee shall specify the non-CDBG sources of funding to be used for the O&M of the electrical power system improvements, and the grantee's plan and plans of its intended subrecipients to contribute to the proposed electrical power system improvements with non-CDBG sources of funding. The grantee shall describe how it will use reserve funds, borrowing authority or retargeting of existing financial resources to support the O&M plan, and how it plans to ensure that public utility resources and other source of funding, as applicable, are committed to the O&M of improvements assisted with CDBG-DR funds, over the useful life of the improvements. The grantee must also describe in its action plan how it plans to ensure and monitor funding of long-term O&M for CDBG-DR electrical power system improvements. Funding options might include grantee funds, local and public utility resources, borrowing authority, or retargeting of other existing financial resources.

Grantees must describe any proposed changes to existing taxation policies or collection practices, or changes to public utility revenue billing and collection and other financing policies that are to be used to support the O&M plan. If operations and maintenance plans are reliant on any proposed changes to existing taxation policies, tax collection practices, or changes to public utility revenue billing and collection, those changes and relevant milestones should be expressly included in the action plan. Additionally, the grantee must describe any State, local, or other resources (e.g., public utility financing) that have been identified for the operation and maintenance costs of electrical power system improvements assisted with CDBG-DR funds.

With respect to this element of the action plan, HUD advises grantee and subrecipients that HUD may impose a grant condition based on risk that requires the grantee to establish or adopt standards for O&M of the functional components of the electrical power system, including recognized standards for vegetation management.

(8) Cost Verification. Each grantee must describe its controls for assuring that electrical power system improvement costs, including acquisition and construction costs, are reasonable and consistent with market costs at the time and place of the acquisition or construction.

Grantees are encouraged to consider the use of an independent, qualified third-party engineer, construction manager, or other professional (e.g., a cost estimator) to verify the planned project specifications and costs and any significant changes to the specifications or costs of the contract (e.g., change orders) during implementation are reasonable. The method and degree of analysis may vary dependent upon the circumstances surrounding a particular project (e.g., project type, risk, costs), but the description, at a minimum, must address controls for CDBG-DR electrical power system improvements above a certain total project cost threshold identified by the grantee's cost verification requirements.

(9) Intergovernmental Coordination. Grantees must describe how it will coordinate with other relevant governmental agencies of Puerto Rico or the USVI, as applicable, units of local government, public utilities and rural electrical cooperatives, and other entities, to assure the consistency of all CDBG-DR funded electrical power system improvements with other disaster recovery and mitigation planning and development activities.

(10) Integration with Disaster Recovery and Mitigation Funds. Grantees must describe how they will integrate the electrical power system improvements into on-going and planned rebuilding, recovery, and mitigation activities, and the extent to which the proposed electrical power system improvement activities are consistent with the objectives outlined in other CDBG-DR or CDBG-MIT action plans, and in regionally or locally established plans and policies that are designed to reduce future risks to the jurisdiction.

(11) Vulnerable Populations, Underserved Communities, and Low- and Moderate-Income Persons. The grantee must assess how the use of the CDBG-DR funds and its planning decisions will impact vulnerable populations, protected classes under fair housing and civil rights laws, and underserved communities that were economically distressed prior to the

disaster. Based on this assessment, grantees must describe in the action plan whether their programs and projects will provide electrical power system improvements to communities with concentrations of vulnerable populations, including low-income rural areas, racially and ethnically concentrated areas as well as concentrated areas of poverty, and specify the activities that the grantees plans to undertake to assist in providing lower electricity rates or increasing reliability, quality, and durability of electrical infrastructure for these populations or areas.

HUD generally defines vulnerable populations as a group or community whose circumstances present barriers to obtaining or understanding information or accessing resources, and grantees must identify those populations in the action plan through their assessment. The term “underserved communities” refers to populations sharing a particular characteristic, as well as geographic communities, that have been systematically denied a full opportunity to participate in aspects of economic, social, and civic life.

The grantee shall also describe how the planned electrical power system improvements will meet the overall benefit requirement for low- and moderate-income benefit as provided in section V.A.8.c. of this notice.

(12) Climate Considerations. Grantees must describe how the electrical power system improvements will be designed and implemented to address the impacts of climate change, including any nature-based solutions and other improvements that will enhance the ability of the grantee to implement renewable and clean energy sources and strategies, and align with long-term goals for decarbonizing the electricity sector. Nature-based solutions and improvements shall mean natural processes or systems, or engineered systems that mimic natural systems and processes, that are integrated into investments in electrical power system improvements to enhance the resilience of the electrical power system to future disasters.

V.A.2.b. *Review and Approval of Action Plan.* The action plan (including SF-424 and certifications) must be submitted to HUD for review and approval. Grantees must submit an action plan within 120 days of the applicability date of this notice, unless the grantee has

requested, and HUD has approved an extension of the submission deadline. HUD will review each action plan within 60 days from the date of receipt. The Secretary may disapprove an action plan as substantially incomplete if it is determined that the action plan does not meet the requirements of this notice.

V.A.2.c. *Clarity of action plan.* Every grantee must include sufficient information so that all interested parties will be able to understand and comment on the action plan and, if applicable, be able to prepare responsive applications to the grantee.

V.A.2.d. *Amending the action plan.* The grantee must amend its action plan to update its electrical power system needs assessment, modify, or create new activities, or reprogram funds. Each amendment must be highlighted, or otherwise identified, within the context of the entire action plan. The beginning of every action plan amendment must include: (1) a section that identifies exactly what content is being added, deleted, or changed; (2) a chart or table that clearly illustrates where funds are coming from and where they are moving to; (3) a revised budget allocation table that reflects the entirety of all funds, as amended; and (4) a description of how the amendment is consistent with a grantee's electrical power system needs assessment. Every amendment to the action plan (substantial and non-substantial) must be numbered sequentially and posted on the grantee's website. A grantee's current version of its entire action plan must be accessible for viewing as a single document at any given point in time, rather than the public or HUD having to view and cross-reference changes among multiple amendments.

(1) Substantial amendment. The grantee must provide a 30-day public comment period and reasonable method(s) (including electronic submission) for receiving comments on such amendments. In its action plan, each grantee must specify criteria for determining what changes in the grantee's plan constitute a substantial amendment to the plan. At a minimum, the following modifications will constitute a substantial amendment: a change in program benefit or eligibility criteria; the addition or deletion of an activity or of a component of the electrical power system improvements; or the allocation or reallocation of a monetary threshold

specified by the grantee in its action plan. The grantee may substantially amend the action plan if it follows the same procedures required for CDBG-DR funds for the preparation and submission of an action plan in this notice, provided, however, that a substantial action plan amendment shall require a 30-day public comment period and does not require public hearings.

(2) Non-substantial amendment. The grantee must notify HUD, but is not required to seek public comment, when it makes any plan amendment that is not substantial. HUD must be notified at least 5 business days before the amendment becomes effective. The Department will acknowledge receipt of the notification of non-substantial amendments via email within 5 business days. Non-substantial amendments shall be numbered in sequence with other non-substantial and substantial amendments and incorporated into the action plan.

V.A.2.e. *Additional consultation requirements.* To encourage effective coordination between the grantees and their Federal partners in the planning and implementation of electrical power system improvements, the alternative requirement in paragraph V.A.6. requires the grantee to comply with the consultation requirements in this section. Each grantee must consult not less than quarterly with the Federal members of the Energy Technical Coordination Team (TCT), co-led by FEMA and the U.S. Department of Energy (DOE). Such consultation shall be required during the grant period of performance unless HUD notifies the grantee that consultation is no longer required. HUD will provide the grantee with instructions for consultation.

A grantee's consultation with the TCT must include soliciting and considering input from the TCT's Federal members on one or more of the areas defined below:

(1) The action plan required by this notice prior to the grantee's publication of the plan and on any subsequent substantial amendments to the action plan, including the grantee's proposed budget for electrical power system improvements to be funded with CDBG-DR funds as described in section V.A.2.a.(2) of this notice;

- (2) The evaluation of the capacity of any public utility that will receive a subaward or otherwise carry out a portion of the grant and the mitigation of risk associated with the public utility's use of CDBG-DR funds. Consultation with the TCT Federal members shall occur before entering a subaward or other agreement with the public utility, and shall include: a) providing the TCT Federal members with the grantee's assessment of the public utility's financial and operational capacity; b) a request for recommendations for appropriate controls to mitigate the financial management, program, and other risks of noncompliance related to the public utility's use of Federal funding for electrical power system improvements; and c) a request for the TCT's recommendations for improving the public utility's operational capacity;
- (3) The identification of opportunities to sequence and coordinate permits and approvals necessary to carry out CDBG-DR funded electrical power system improvement activities, including environmental reviews;
- (4) The technical evaluation of proposed electrical power system improvements using models and other sources of expert assistance available through TCT Federal members; and
- (5) The implementation of applicable electrical power system industry standards and the commercial availability of system components that the grantee proposes to fund.

HUD may engage with the individual federal agencies in the TCT to provide additional technical support for grantee electrical power system improvements, as needed. Notwithstanding the consultation and advisory roles that may be provided by FEMA and DOE as co-agency TCT leads, the Department of the Treasury as financial lead, and other federal partner agencies, each federal agency shall retain the authorities and responsibilities provided to that agency pursuant to federal laws and regulations.

V.A.2.f. Waiver of 45-day review period for action plan and substantial action plan amendments. The Department recognizes the unique purposes and complex requirements of this

CDBG-DR allocation for electrical power system improvements and that these funds represent an opportunity for grantees to use this assistance in areas impacted by the 2017 disasters. While HUD may disapprove an action plan or substantial action plan amendment if it is substantially incomplete or for other reasons identified in 24 CFR 91.500, HUD works with grantees to resolve or provide additional information during the review period to avoid the need to disapprove an action plan or substantial action plan amendments. There are often many issues related to the action plan or substantial action plan amendments that can be fully resolved via further discussion and revision during an extended review period, rather than through HUD's disapproval of the action plan or amendments, which in turn would require grantees to take additional time to revise and resubmit their action plan or respective amendments and delay recovery. As such, the Secretary has determined that good cause exists and waives 24 CFR 91.500(a) to extend HUD's review period for action plan and substantial amendments from 45 days to 60 days.

V.A.2.g. *Projection of expenditures and outcomes.* Each grantee must submit projected expenditures and outcomes as part of the action plan. The projections must be based on each quarter's expected performance—beginning with the quarter funds are available to the grantee and continuing each quarter until all funds are expended. The projections will enable HUD, the public, and the grantee to track proposed versus actual performance. The projections must also be clearly and conspicuously displayed on the grantee's website. If a grantee's performance indicates a pattern of deviation from projected expenditures and outcomes, HUD may review the grantee's capacity assessment and implementation plan and require an update to that plan or impose corrective actions to mitigate the risks associated with failure to meet projections. The published action plan must be amended for any subsequent changes, updates, or revision of the projections. Guidance on the preparation of projections is available here:

<https://www.hudexchange.info/resource/5734/cdbg-dr-grantee-projections-of-expenditures-and-outcomes/>

V.A.3. *Citizen participation waiver and alternative requirement.* To permit a more robust process and ensure that electrical power system improvement activities are developed through methods that allow all stakeholders to participate, and because citizens that are continuing to recover from disasters are best suited to ensure that grantees will be advised of any missed opportunities and additional risks that need to be addressed, provisions of 42 U.S.C. 5304(a)(2) and (3), 42 U.S.C. 12707, 24 CFR 570.486, 24 CFR 91.105(b) and (c), and 24 CFR 91.115(b) and (c), with respect to citizen participation requirements, are waived and replaced by the requirements below. The grantee is required to provide a reasonable opportunity (at least 45 days) for citizen comment and ongoing citizen access to information about the use of grant funds. The revised citizen participation requirements for this notice include sections V.A.3.a to V.A.3.e. below.

V.A.3.a. *Publication of the action plan and opportunity for public comment.* HUD continues to emphasize the importance of a robust citizen participation process, which shall include at least two public hearings on the proposed action plan. The grantee must either amend its existing citizen participation plan or adopt a new plan that incorporates the electrical power system improvements through CDBG-DR funds with the specific citizen participation requirements outlined in this section. At least one of these public hearings is to occur prior to a grantee's publication of its action plan on its website for public comment, and unless the grantee conducts a virtual hearing pursuant to section V.A.3.b. below, all hearings are to be convened at different locations that reflect geographic balance and ensure maximum accessibility.

Before the grantee submits the action plan for this grant to HUD or any substantial amendment to the action plan as provided in section V.A.2.d. of this notice, the grantee will publish the proposed action plan or amendment. The manner of publication must include prominent posting on the grantee's official website and must afford citizens, affected local governments, and other interested parties a reasonable opportunity to examine the plan or amendment's contents. The topic of electrical power system improvements, as part of the

grantee's broader disaster recovery efforts, must be navigable by citizens from the grantee's (or relevant agency's) homepage.

Grantees are also encouraged to notify affected citizens through electronic mailings, press releases, statements by public officials, media advertisements, public service announcements, and/or contacts with neighborhood organizations. Grantees should also consider recording public hearings and making them available online for live viewing and creating archival video of the public meetings on the grantee's website. Plan publication efforts and public hearings must comply with civil rights requirements, including meeting the effective communications requirements under Section 504 of the Rehabilitation Act (see, 24 CFR 8.6) and the Americans with Disabilities Act (see 28 CFR 35.160); and must provide meaningful access for persons with Limited English Proficiency (LEP) (see HUD's LEP Guidance, 72 FR 2732 (2007)).

Grantees are responsible for ensuring that all citizens have equal access to information about the CDBG-DR programs, including persons with disabilities and persons with limited English proficiency (LEP). Each grantee must ensure that electrical power system improvement funding and program information is available in the appropriate languages for the geographic areas to be served (see HUD's LEP Guidance, March 16, 2007, 72 FR 2732) and take appropriate steps to ensure effective communications with persons with disabilities under Section 504 (see, 24 CFR 8.6) and the Americans with Disabilities Act (see 28 CFR 35.106).

Since grantees receiving CDBG-DR funds may make grants throughout the state, including to Entitlement communities, grantees should carefully evaluate the needs of persons with disabilities and those with limited English proficiency. In assessing its language needs for translation of notices and other vital documents for non-English speaking residents, the grantee should consult the Final Guidance to Federal Financial Assistance Recipients Regarding Title VI, Prohibition Against National Origin Discrimination Affecting Limited English Proficient Persons, published on January 22, 2007, in the **Federal Register** (72 FR 2732) and at: https://www.lep.gov/sites/lep/files/resources/HUD_guidance_Jan07.pdf.

V.A.3.b. *Clarification on public hearings and consideration of public comments.* Public hearings required by this notice may include virtual public hearings (alone, or in concert with an in-person hearing) if the virtual hearing allows for questions in real time, with answers coming directly from the grantee's representatives to all "attendees," subject to the requirements of this paragraph. Virtual hearings provide grantees with additional flexibility in the implementation of CDBG-DR funds during the Coronavirus Disease (COVID-19) pandemic to enable social distancing during the public health emergency. Grantees subject to this notice may hold virtual hearings in lieu of in-person public hearings to fulfill the public hearing requirements in section V.A.3.a. of this notice.

For each virtual hearing, the grantee shall provide reasonable notification and access for citizens in accordance with the grantee's certifications, timely responses to all citizen questions and issues, and public access to all questions and responses.

The grantee must consider all comments, received orally or in writing, on the action plan or any substantial amendment. A summary of these comments or views, and the grantee's response to each must be submitted to HUD with the action plan or substantial amendment. Grantee responses shall address the substance of the comment rather than merely acknowledge that the comment was received.

V.A.3.c. *Public website.* HUD is requiring grantees to maintain a public website which provides information accounting for how all CDBG-DR funds for electrical power system improvements are used, managed, and administered, including links to all action plans, action plan amendments, performance reports, CDBG-DR citizen participation requirements, and activity/program information for activities described in the action plan, including details of all contracts and ongoing procurement policies. To meet this requirement, each grantee must make the following items available on its website: the action plan (including all amendments); each Quarterly Performance Report (QPR) (as created using the DRGR system); procurement policies and procedures; all executed contracts that will be paid with CDBG-DR funds; and the status of

services or goods currently being procured (e.g., a summary list of procurements, the phase of the procurement, requirements for proposals, and any liquidation of damages associated with a contractor's failure or inability to implement the contract, etc.). The grantee should post only contracts as defined in 2 CFR 200.1.

V.A.3.d. *Application status and funding criteria.* The grantee must provide multiple methods of communication, such as websites, toll-free numbers, or other means that provide applicants for CDBG-DR assistance with timely information to determine the status of their application, as provided for in section V.A.1.b.(1) of this notice.

When applications are solicited for programs carried out directly by the grantee, all criteria used to select applications for funding, including the relative importance of each criterion and the time frame for consideration of applications must be included in the action plan. When funds are subgranted to local governments or Indian tribes, grantees must include all criteria used to distribute funds to local governments or Indian tribes including the relative importance of each criterion. The grantee shall maintain documentation to demonstrate that each funded and unfunded application or response was reviewed and acted upon by the grantee in accordance with the published eligibility requirements and funding criteria in its action plan.

V.A.3.e. *Citizen complaints.* The grantee will provide a timely written response to every citizen complaint. The response must be provided within 15 working days of the receipt of the complaint. Complaints regarding fraud, waste, or abuse of government funds should be forwarded to the HUD OIG Fraud Hotline (phone: 1-800-347-3735 or email: hotline@hudoig.gov).

V.A.4. *HUD performance review authorities and grantee reporting requirements in the Disaster Recovery Grant Reporting (DRGR) System.*

V.A.4.a. *Performance review authorities.* 42 U.S.C. 5304(e) requires that the Secretary shall, at least on an annual basis, make such reviews and audits as may be necessary or

appropriate to determine whether the grantee has carried out its activities in a timely manner, whether the grantee's activities and certifications are carried out in accordance with the requirements and the primary objectives of the HCDA and other applicable laws, and whether the grantee has the continuing capacity to carry out those activities in a timely manner.

This notice waives the requirements for submission of a performance report pursuant to 42 U.S.C. 12708(a), and 24 CFR 91.520 . Alternatively, HUD is requiring that grantees enter information in the DRGR system in sufficient detail to permit the Department's review of grantee performance on a quarterly basis through the QPR and to enable remote review of grantee data to allow HUD to assess compliance and risk. HUD-issued general and appropriation-specific guidance for DRGR reporting requirements can be found on the HUD Exchange at: <https://www.hudexchange.info/programs/drgr/>.

V.A.4.b. *DRGR action plan*. Each grantee must enter its action plan for disaster recovery, including performance measures, into HUD's DRGR system. As more detailed information about uses of funds is identified by the grantee, it must be entered into the DRGR system at a level of detail that is sufficient to serve as the basis for acceptable performance reports and permits HUD review of compliance requirements. The action plan must also be entered into the DRGR system so that the grantee is able to draw its CDBG-DR funds. The grantee may enter activities into the DRGR system before or after submission of the written action plan to HUD but will not be able to budget grant funds to these activities until after the grant agreement has been signed. To enter an activity into the DRGR system, the grantee must know the activity type, national objective, and the organization that will be responsible for the activity. In addition, a Data Universal Numbering System (DUNS) number must be entered into the system for each Responsible Organization identified in DRGR as carrying out a CDBG-DR funded activity.

A grantee will gain access to its line of credit upon review and approval of the initial DRGR action plan. Each activity entered into the DRGR system must also be categorized under

a “project.” Typically, projects are based on groups of activities that accomplish a similar, broad purpose (e.g., housing, infrastructure, or economic development) or are based on an area of service (e.g., Community A). If a grantee describes only one program within a broader category (e.g., microgrids), that program is entered as a project in the DRGR system. Further, the budget of the program would be identified as the project’s budget. If a grantee has only identified the Method of Distribution (MOD) upon HUD’s approval of the published action plan, the MOD categories typically serve as the projects in the DRGR system, rather than activity groupings. Activities are added to MOD projects as specific CDBG-DR programs and projects are identified for funding.

V.A.4.c. Tracking oversight activities in the DRGR system; use of DRGR data for HUD review and dissemination. Each grantee must also enter into the DRGR system summary information on monitoring visits and reports, audits, and technical assistance it conducts as part of its oversight of its disaster recovery programs. The grantee’s QPR will include a summary indicating the number of grantee oversight visits and reports (see V.A.4.e. for more information on the QPR). HUD will use data entered into the DRGR action plan and the QPR, transactional data from the DRGR system, and other information provided by the grantee, to provide reports to Congress and the public, as well as to: (1) monitor for anomalies or performance problems that suggest fraud, abuse of funds, and duplication of benefits; (2) reconcile budgets, obligations, funding draws, and expenditures; (3) calculate expenditures to determine compliance with administrative and public service caps and the overall percentage of funds that benefit low- and moderate-income persons; and (4) analyze the risk of grantee programs to determine priorities for the Department’s monitoring. Grantees must establish internal controls to ensure that no personally identifiable information shall be reported in DRGR.

V.A.4.d. Tracking program income in the DRGR system. Grantees must use the DRGR system to draw grant funds. Grantees must also use the DRGR system to track program income receipts, disbursements, revolving loan funds, and leveraged funds (if applicable). If a grantee

permits subrecipients to retain program income prior to grant closeout, the grantee must establish program income accounts in the DRGR system. The DRGR system requires grantees to use program income before drawing additional grant funds and ensures that program income retained by one organization will not affect grant draw requests for other organizations.

V.A.4.e. *DRGR system Quarterly Performance Report (QPR)*. Each grantee must submit a QPR through the DRGR system no later than 30 days following the end of each calendar quarter. Within 3 days of submission to HUD, each QPR must be posted on the grantee's official website. In the event the QPR is rejected by HUD, the grantee must post the revised version, as approved by HUD, within 3 days of HUD approval. The grantee's first QPR is due after the first full quarter after HUD signs the grant agreement. For example, a grant agreement signed in April requires a QPR to be submitted by October 30. QPRs must be submitted on a quarterly basis until all funds have been expended and all expenditures and accomplishments have been reported. If a satisfactory report is not submitted in a timely manner, HUD may suspend access to CDBG-DR funds until a satisfactory report is submitted, or may withdraw and reallocate funding if HUD determines, after notice and opportunity for a hearing, that the jurisdiction did not submit a satisfactory report.

Each QPR will include information about the uses of funds in activities identified in the DRGR action plan during the applicable quarter. This includes, but is not limited to, the project name, activity, location, and national objective; funds budgeted, obligated, drawn down, and expended; the funding source and total amount of any non-CDBG-DR funds to be expended on each activity; beginning and actual completion dates of completed activities; achieved performance outcomes, such as the number of low- and moderate-income persons served; and the race and ethnicity of persons assisted under direct-benefit activities. For electrical power system improvements installed or applied on private lands, the address of each CDBG-DR assisted property must be recorded in the QPR. Grantees must not include such addresses in its public QPR; when entering addresses in the QPR, the grantee must select "Not Visible on PDF"

to exclude them from the report required to be posted on its website. The DRGR system will automatically display the amount of program income receipted, the amount of program income reported as disbursed, and the amount of grant funds disbursed in the QPR. In the section titled “Overall Progress Narrative” in the DRGR system, the grantee must report on its activities and progress in that quarter to implement steps necessary to meet the low- and moderate-income national objective for electrical power system improvements as provided in section V.A.8. of this notice. Each grantee must also include a description of active steps it has taken to affirmatively further fair housing, within the “Overall Progress Narrative” section.

V.A.5. Direct grant administration and means of carrying out eligible activities.

Requirements at 42 U.S.C. 5306(d) are waived to the extent necessary to allow each grantee to use its CDBG-DR grant directly to carry out CDBG-DR eligible activities, rather than distribute all funds to local governments. Pursuant to this waiver, the standard at 24 CFR 570.480(c) and the provisions at 42 U.S.C. 5304(e)(2) will also include activities that the grantee carries out directly. Eligible CDBG-DR activities may be carried out by the grantee, subject to the grantee’s laws and consistent with the requirement of 24 CFR 570.200(f), through its employees, through procurement contracts, or through assistance provided under agreements with subrecipients. Each grantee continues to be responsible for civil rights, labor standards, and environmental protection requirements, for compliance with 24 CFR 570.489 (g) and (h) relating to conflicts of interest and for compliance with 24 CFR 570.489(m) relating to monitoring and management of subrecipients.

V.A.5.a. Use of administrative funds across multiple grants. The Additional Supplemental Appropriations for Disaster Relief Act, 2019 (P.L. 116-20, approved June 6, 2019), authorizes special treatment of grant administrative funds for grantees that receive grants under certain CDBG-DR appropriations acts. Accordingly, grantees that received CDBG-DR or CDBG-MIT funds under Public Laws 114-113, 114-223, 114-254, 115-31, 115-56, 115-123, and 115-254, or any future act may use eligible administrative funds (up to 5 percent of each grant

award plus up to 5 percent of program income generated by the grant) appropriated by these acts without regard to the particular disaster appropriation from which such funds originated. If the grantee chooses to exercise this authority, the grantee must ensure that it has appropriate financial controls to ensure that the amount of grant administration expenditures for each of the aforementioned grants will not exceed 5 percent of the total grant award for each grant (plus 5 percent of program income generated by the grant), review and modify its financial management policies and procedures regarding the tracking and accounting of administration costs, as necessary, and address the adoption of this treatment of administrative costs in the applicable portions of the submissions it makes to HUD to support HUD's certifications as required by subsection V.A.1.a.

Grantees are reminded that all costs incurred for administration must still qualify as an eligible administration expense. HUD will issue additional guidance on this provision that grantees will be required to follow to ensure compliance and maintain proper financial controls.

V.A.6. Requirements for consultation. Currently, the HCDA and HUD regulations require a state grantee to consult with affected local governments in nonentitlement areas of the state in determining the state's proposed method of distribution. HUD is waiving 42 U.S.C. 5306(d)(2)(C)(iv), 42 U.S.C. 5306(d)(2)(D), 24 CFR 91.325(b)(2), and 24 CFR 91.110, and instituting the following alternative requirements. Each grantee that will receive an electrical power system improvement grant under P.L. 115-123 shall consult with all disaster-affected local governments (including any CDBG Entitlement grantees), Indian tribes, and local public housing authorities in determining the use of funds. This ensures that each grantee sufficiently assesses the impacts of all areas affected by the disaster. Additionally, each grantee must complete consultation with the Federal members of the TCT required by section V.A.2.e. of this notice. Grantees must maintain documentation of all consultations required by this paragraph to demonstrate compliance with this requirement.

V.A.7. Grant Administration responsibilities and general administration cap.

V.A.7.a. *Grantee responsibilities.* Each grantee shall administer its award in compliance with all applicable laws and regulations and shall be financially accountable for the use of all funds provided for CDBG-DR funds.

V.A.7.b. *General administration cap.* For this allocation, the CDBG program administration requirements must be modified to be consistent with the Appropriations Act. Accordingly, 5 percent of the grant and 5 percent of program income generated by the grant may be used for administrative costs by the grantee or by subrecipients. Thus, the total of all costs classified as administrative for the grantee must be less than or equal to the 5 percent cap.

(1) Combined technical assistance and administrative expenditures cap. The provisions of 42 U.S.C. 5306(d), 24 CFR 570.489(a)(1)(i) and (iii), and 24 CFR 570.489(a)(2) will not apply to the extent that they cap administration and technical assistance expenditures, limit the ability of each grantee to charge a nominal application fee for grant applications for activities it carries out directly, and require a dollar-for-dollar match of grantee funds for administrative costs exceeding \$100,000. 42 U.S.C. 5306(d)(5) and (6) are waived and replaced with the alternative requirement that the aggregate total for administrative and technical assistance expenditures must not exceed 5 percent of the grant amount plus 5 percent of program income generated by the grant. Under this alternative requirement, the grantee is limited to spending a maximum of 15 percent of its total grant on planning costs. Planning costs subject to this cap are those defined in 42 U.S.C. 5305(a)(12).

V.A.8. *Purpose, eligibility, overall benefit, and national objective alternative requirements.*

V.A.8.a. *Purpose.* As stated in section III, the Appropriations Act requires grantees to use funds for electrical power system improvements. HUD encourages grantees to use CDBG-DR funds for electrical power system improvements in a manner that leverages other sources of federal and public utility funds to increase the long-term impact of Federal investments on the electrical power system.

For purposes of this notice:

(i) an electrical power system shall be defined as an interconnected or autonomous set of transmission lines, distribution lines, substations, central power generation stations, other sources of power, distributed energy resources, or enabling technologies and services, such as industry standard billing, accounting information technology, cybersecurity enhancements, microgrids and fuel transfer delivery systems, that are necessary for the provision of reliable, resilient, stable, and cost-effective electrical service; and

(ii) electrical power system improvements shall be defined as the acquisition, construction, reconstruction, rehabilitation or installation of facilities, improvements, or other components (including interim assistance, and financing public or private acquisition for reconstruction or rehabilitation, and reconstruction or rehabilitation, of privately owned property) that are undertaken to extend, upgrade, and otherwise enhance and improve the cost-effectiveness, reliability, efficiency, sustainability, or long-term financial viability of the grantee's electrical power system including activities to increase the resilience of the electrical power system to future disasters and to address the impacts of climate change.

The refinancing or paying down of debt shall be an electrical power system improvement only for the purpose of acquiring a facility and subject to the requirements of section V.B.3 of this notice.

To align with long term decarbonization goals, the term electrical power system improvements, as applied to central power generating stations, shall only include an improvement or replacement of a central power generating station operating on the applicability date of this notice if HUD, in consultation with DOE and EPA, determines that such improvement or replacement will result in a net decrease in carbon emissions from that generating power station at comparable levels of operation. A central power generating station is defined as a large-scale centralized facility for the generation of electricity that qualifies as a "major stationary source of air pollutants" per the requirements of 40 CFR part 70.

V.A.8.b. *Eligibility.* A grantee must use grant funds for electrical power system improvements that satisfy all requirements for an electrical power system improvement activity as described in V.A.8.a. above. HUD will consider grantee requests for additional waivers and alternative requirements if needed to carry out other activities that enhance or improve their electrical power systems. All requests must include supporting data that demonstrates the need for the waiver and alternative requirement. Grantees should work with the assigned CPD representative to request any additional waivers or alternative requirements from HUD headquarters.

HUD is granting the following waiver and alternative requirement to establish a new eligible activity, the electrical power systems improvements activity. The Department has determined that the aggregate of electrical power system improvements to be completed with CDBG-DR funds subject to this notice are together, critical components of the region's long-term recovery from Hurricane Maria and to the resilience of the region to future weather events. HUD recognizes that the broad scope of these activities may limit the ability of grantees to categorize these CDBG-DR funds into discrete categories of CDBG eligibility and to appropriately assign a CDBG national objective to each component of the planned improvements. For grants under other appropriations acts, HUD has established similar waivers to create an eligible activity for large complex projects that are composed of multiple activities that, in and of themselves, may not all be CDBG-eligible, but which nonetheless contribute to the mitigation of disaster risk and to long-term disaster recovery. This waiver will similarly ease administration and facilitate the use of grant funds for their intended purpose.

Accordingly, HUD is waiving section 105(a) (42 U.S.C. 5305(a)) of the HCDA and establishing an alternative requirement only to the extent necessary to create a new eligible activity, electrical power system improvements, which shall be applicable only for the grant funded pursuant to this notice. Under this activity, all uses of funds that meet the definition of

electrical power system improvements above and comply with the alternative requirements below are both eligible under this waiver and alternative requirement and meet the statutory purpose of the funds. This activity includes the use of funds for payment of the non-Federal share required in connection with a Federal grant-in-aid program undertaken as part of an activity that meets the definition of electrical power system improvements and otherwise complies with grant requirements. This activity also includes relocation payments and assistance for displaced individuals, families, businesses, organizations, and farm operations, when determined by the grantee to be appropriate.

Electrical power system improvements that can be demonstrated to have a public benefit may be installed or applied on private lands. The definition of an electrical power system and the use of funds for electrical power system improvements shall not include ineligible activities as provided at 24 CFR 570.207, including costs for the operation and maintenance of the system. This definition and the use of funds for electrical power system improvements shall also not include the use of CDBG-DR funds for the operation and maintenance costs of a public utility or the costs of fuel or energy purchase contracts in effect prior to the applicability date of this notice. HUD encourages grantees to use CDBG-DR funds for electrical power system improvements in a manner that leverages other sources of federal and public utility funds to increase the long-term impact of Federal investments on the electrical power system.

V.A.8.c. Overall benefit and national objective requirements. The primary objective of the HCDA is the “development of viable urban communities, by providing decent housing and a suitable living environment and expanding economic opportunities, principally for persons of low and moderate income” (42 U.S.C. 5301(c)). Consistent with the HCDA, this notice requires grantees to comply with the overall benefit requirements in the HCDA and 24 CFR 570.484 that 70 percent of funds be used for activities that benefit low- and moderate-income persons. For purposes of this grant, HUD is establishing an alternative requirement that the overall benefit test

shall apply only to the use of CDBG-DR funds provided under the Appropriations Act for electrical power system improvements and related program income, and not to all CDBG funds received by the grantee during another period selected by the grantee in accordance with 570.484(a).

CDBG-DR electrical power system improvements will be considered to meet the criteria for activities benefitting low- and moderate-income persons – area benefit activities at 24 CFR 570.483(b)(1) if, at grant closeout, they meet the following criteria unless there is substantial evidence to the contrary. In assessing any such evidence, the full range of direct effects of the assisted activity will be considered. (The recipient shall appropriately ensure that activities that meet these criteria do not benefit moderate income persons to the exclusion of low-income persons.) The criteria are that at least 70 percent of the grant funds allocated by this notice, not including planning and administrative costs, have been used to:

(i) provide at least fifty-one percent of the grantee’s low- and moderate-income residents with either a subsidized rate for electricity below that charged to other residential ratepayers or a lower rate for electricity than was charged prior to complete implementation of the CDBG-DR funding electrical power system improvements; or

(ii) measurably improve the reliability of the electrical power system in low- and moderate-income areas that are primarily residential. For purposes of this paragraph, measurably improved reliability shall mean a documented decrease in power supply interruptions, excluding planned interruptions and interruptions caused by major events. To document compliance with this national objective criterion, a grantee’s policies and procedures shall provide for the measurement of improved reliability in low- and moderate income areas that are primarily residential, using relevant legal and regulatory standards, as amended from time to time, including those identified by Puerto Rico Act 17-2019 (for Puerto Rico only), FEMA Section 1235(b) Consensus-Based Codes and Standards, RUS Bulletins for Electric Power, Institute of Electrical and Electronics Engineers (IEEE) standards and guidance, EPA environmental

protections, and, as appropriate, North American Electric Reliability Corporation (NERC) standards and guidance.

HUD will monitor the grantee and its subrecipients for the duration of the grant to substantiate that the grantee is demonstrating adequate progress in documenting CDBG-DR expenditures that will result in subsidized or lower electricity costs of low- and moderate-income residents, or improved reliability for low- and moderate-income areas, as applicable.

Grantees may also use CDBG-DR funds allocated pursuant to this notice to meet the urgent need national objective, pursuant to the waiver and alternative requirement provided below. Unless a grantee has received prior approval from HUD, CDBG-DR funds for electrical power system improvements cannot meet the CDBG national objective for the elimination of slum and blight as provided at 24 CFR 570.208(b) and 24 CFR 570.483(c). Grantees shall not rely on the national objective criteria for elimination of slum and blighting conditions without approval from HUD because this national objective generally is not appropriate in the context of electrical power system improvements.

The CDBG certification requirements for documentation of urgent need, located at 24 CFR 570.483(d), are waived for the grants under this notice and replaced with the following alternative requirement. In the context of disaster recovery, the standard urgent need certification requirements may impede recovery. Since the Department only provides CDBG-DR awards to grantees with documented disaster-related impacts and each grantee is limited to spending funds only for the benefit of areas that received a presidential disaster declaration as identified in Table 1 of this notice, the following streamlined alternative requirement recognizes the urgency in addressing serious threats to community welfare following a major disaster. A grantee need not issue formal certification statements to qualify an activity as meeting the urgent need national objective. Instead, it must document how each program and/or activity funded under the urgent need national objective responds to a disaster-related impact. For each activity that will meet an urgent need national objective, the grantee must reference in its action plan

needs assessment the type, scale, and location of the disaster-related impacts that each program and/or activity is addressing over the course of the applicable deadline for the expenditure of obligated grant funds.

To meet the 70 percent overall benefit requirement, grantees may also use the low- and moderate-income benefit national objective criteria at 24 CFR 570.483(b) to the extent that an eligible activity authorized by this notice qualifies under the criteria for that national objective. At least 70 percent of the entire CDBG–DR grant must be used for activities that benefit low- and moderate-income persons.

V.A.9. Use of subrecipients. The State CDBG program rule does not make specific provisions for the treatment of entities that the CDBG Entitlement program calls “subrecipients.” The waiver allowing the state to directly carry out activities creates a situation in which the state may use subrecipients to carry out activities in a manner similar to an entitlement community. Therefore, in taking advantage of the waiver to carry out activities directly, grantees shall be subject to the requirements at 24 CFR 570.503 and 570.500(c), except that in compliance with 570.489(g), grantees shall establish procurement requirements for local governments and subrecipients (which may or may not include procurement provisions of 2 CFR part 200 that are applicable to a grantee’s subrecipients).

V.A.10. Recordkeeping. When a grantee receiving CDBG-DR grants for electrical power system improvements under P.L. 115-123 carries out activities directly, 24 CFR 570.490(b) is waived, and the following alternative provision shall apply: The grantee shall establish and maintain such records as may be necessary to facilitate review and audit by HUD of the grantee’s administration of CDBG-DR funds, under 24 CFR 570.493. Consistent with applicable statutes, regulations, waivers and alternative requirements, and other Federal requirements, the content of records maintained by the grantee shall be sufficient to: (1) Enable HUD to make the applicable determinations described at 24 CFR 570.493; (2) make compliance determinations for activities carried out directly by the grantee; and (3) show how activities funded are consistent with the

descriptions of activities proposed for funding in the action plan and/or DRGR system. For fair housing and equal opportunity (FHEO) purposes, as applicable, such records shall include data on the racial, ethnic, and gender characteristics of persons who are applicants for, participants in, or beneficiaries of the program. The grantee must report FHEO data in the DRGR system at the activity level.

V.A.11. Responsibility for review and handling of noncompliance. This change is in conformance with the waiver allowing the grantee to carry out activities directly. 24 CFR 570.492 is waived and the following alternative requirement applies to grantees receiving CDBG-DR grants for electrical power system improvements under P.L. 115-123: the grantee shall make reviews and audits, including on-site reviews of any subrecipients, designated public agencies, local governments and other entities as may be necessary or appropriate to meet the requirements of section 104(e)(2) of the HCDA, as amended, and as modified by this notice. In the case of noncompliance with these requirements, the grantee shall take such actions as may be appropriate to prevent a continuance of the deficiency, mitigate any adverse effects or consequences, and prevent a recurrence. The grantee shall establish remedies for noncompliance by any designated subrecipients, public agencies, or local governments.

Each CDBG-DR grantee shall attend and require subrecipients to attend fraud-related training provided by HUD OIG to assist in the proper management of CDBG-DR grant funds. The prior participation of the grantee or a subrecipient in this training for purposes of the grantee's CDBG-MIT grant or CDBG-DR grants provided pursuant to Public Laws 115-56 and 115-123 shall satisfy this requirement.

V.A.12. Relocation, and real property acquisition requirements. Activities and projects undertaken with CDBG-DR funds are subject to the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, as amended, (42 U.S.C. 4601 et seq.) ("URA") and section 104(d) of the HCDA (42 U.S.C. 5304(d)) (Section 104(d)). The implementing regulations for the URA are at 49 CFR part 24. The regulations for section 104(d) are at 24 CFR

part 42, subpart C. The Department recognizes that these waivers and alternative requirements are likely to have limited application in a grantee's implementation of electrical power system improvements. Nonetheless, in the course of implementing electrical power system improvements, these waivers and alternative requirements may continue to be necessary. For the purpose of promoting the availability of decent, safe, and sanitary housing, HUD is waiving the following URA and section 104(d) requirements with respect to the use of CDBG-DR funds:

V.A.12.a. *Relocation assistance.* The relocation assistance requirements at section 104(d)(2)(A) of the HCDA and 24 CFR 42.350 are waived to the extent that they differ from the requirements of the URA and implementing regulations at 49 CFR part 24, as modified by this notice, for activities related to electrical power system improvements. Without this waiver, disparities exist in relocation assistance associated with activities typically funded by HUD and FEMA (e.g., acquisition and relocation). Both FEMA and CDBG funds are subject to the requirements of the URA; however, CDBG funds are subject to section 104(d), while FEMA funds are not. The URA provides at 49 CFR 24.402(b) that a displaced person is eligible to receive a rental assistance payment that is calculated to cover a period of 42 months. By contrast, section 104(d) allows a lower-income displaced person to choose between the URA rental assistance payment and a rental assistance payment calculated over a period of 60 months. This waiver of the section 104(d) relocation assistance requirements assures uniform and equitable treatment by setting the URA and its implementing regulations as the sole standard for relocation assistance for CDBG-DR funds.

V.A.12.b. *Arm's length voluntary purchase.* The requirements at 49 CFR 24.101(b)(2)(i) and (ii) are waived to the extent that they apply to an arm's length voluntary purchase carried out by a person who was allocated CDBG-DR funds and does not have the power of eminent domain, in connection with the purchase and occupancy of a principal residence by that person. Given the often-large-scale acquisition needs of grantees, this waiver is necessary to reduce burdensome administrative requirements to implement electrical improvement activities.

Grantees are reminded that tenants occupying real property acquired through voluntary purchase may be eligible for relocation assistance.

V.A.12.c. *Optional relocation policies.* The regulation at 24 CFR 570.606(d) is waived to the extent that it requires optional relocation policies to be established at the grantee level. Unlike the regular CDBG program, States may carry out electrical improvement activities directly or through subrecipients, but 24 CFR 570.606(d) does not account for this distinction. This waiver makes clear that grantees receiving CDBG-DR funds may establish optional relocation policies or permit their subrecipients to establish separate optional relocation policies. This waiver is intended to provide grantees with maximum flexibility in developing optional relocation policies with CDBG-DR funds.

V.A.12.d. *Waiver of Section 414 of the Stafford Act.* Section 414 of the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5121 et seq.). Section 414 of the Stafford Act (42 U.S.C. 5181) provides that “Notwithstanding any other provision of law, no person otherwise eligible for any kind of replacement housing payment under the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (P.L. 91-646) [42 U.S.C. 4601 et seq.] [“URA”] shall be denied such eligibility as a result of his being unable, because of a major disaster as determined by the President, to meet the occupancy requirements set by [the URA].” Accordingly, homeowner occupants and tenants displaced from their homes as a result of the identified disaster and who would have otherwise been displaced as a direct result of any acquisition, rehabilitation, or demolition of real property for a Federally funded program or project may become eligible for a replacement housing payment notwithstanding their inability to meet occupancy requirements prescribed in the URA.

Section 414 of the Stafford Act (including its implementing regulation at 49 CFR 24.403(d)(1)), is waived to the extent that it would apply to real property acquisition, rehabilitation, or demolition of real property for a CDBG-DR funded project, undertaken by the grantee or subrecipient, commencing more than one year after the Presidentially declared

disaster, provided that the project was not planned, approved, or otherwise underway prior to the disaster. For purposes of this paragraph, a CDBG-DR funded project shall be determined to have commenced on the earliest of: (1) The date of an approved Request for Release of Funds and certification, (RROF/C), or (2) the date of completion of the site-specific review when a program utilizes tiered environmental reviews, or (3) the date of sign-off by the Responsible Entity Agency Official when a project converts to exempt under 24 CFR 58.34(a)(12). The Secretary has the authority to waive provisions of the Stafford Act and its implementing regulations that the Secretary administers in connection with the obligation of CDBG-DR funds covered under this waiver and alternative requirement, or the grantee's use of these funds. The Department has determined that good cause exists for a waiver and that such waiver is not inconsistent with the overall purposes of title I of the HCDA.

The waiver will simplify the administration of the disaster recovery process and reduce the administrative burden associated with the implementation of Stafford Act Section 414 requirements for projects commencing more than one year after the date of the Presidentially declared disaster, considering the majority of such persons displaced by the disaster will have returned to their dwellings or found another place of permanent residence. This waiver does not apply with respect to persons that meet the occupancy requirements to receive a replacement housing payment under the URA nor does it apply to persons displaced or relocated temporarily by other HUD-funded programs or projects. Such persons' eligibility for relocation assistance and payments under the URA is not impacted by this waiver.

V.A.13. Environmental requirements.

V.A.13.a. Clarifying note on the process for environmental release of funds when a state carries out activities directly. Usually, a state distributes CDBG funds to units of general local government and takes on HUD's role in receiving environmental certifications from the grant subrecipients and approving releases of funds. For this grant, HUD will allow a grantee to also carry out activities directly, in addition to distributing funds to subrecipients. Thus, per 24

CFR 58.4, when a grantee carries out activities directly, the grantee must submit the Certification and Request for Release of Funds to HUD for approval.

V.A.13.b. *Adoption of another agency's environmental review.* In accordance with the Appropriations Act, grant recipients of Federal funds that use such funds to supplement Federal assistance provided under sections 402, 403, 404, 406, 407, 408(c)(4) or 502 of the Stafford Act may adopt, without review or public comment, any environmental review, approval, or permit performed by a Federal agency, and such adoption shall satisfy the responsibilities of the recipient with respect to such environmental review, approval, or permit that is required by the HCDA.

The grant recipient must notify HUD in writing of its decision to adopt another agency's environmental review. The notification must be stated on an RROF/C Form 7015.15 and indicate that another Federal agency's review is being adopted and include the name of the Federal agency, the name of the project, and the date of the project's review. In accordance with the Appropriations Act, and notwithstanding 42 U.S.C. 5304(g)(2), the Secretary may, upon receipt of a RROF/C, immediately approve the release of funds for an activity or project assisted with CDBG-DR funds if the recipient has adopted an environmental review, approval, or permit, or the activity or project is categorically excluded from review under the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.). The grant recipient must retain a completed electronic or paper copy of the review in the grantee's environmental records.

V.A.13.c. *Unified federal review.* Section 1106 of the Sandy Recovery Improvement Act of 2013 (Div. B of P.L. 113-2, enacted January 29, 2013) directed the establishment of an "expedited and unified interagency review process to ensure compliance with environmental and historic requirements under Federal law relating to disaster recovery projects, in order to expedite the recovery process, consistent with applicable law." The process aims to coordinate environmental and historic preservation reviews to expedite planning and decision-making for disaster recovery projects. This can improve the Federal Government's assistance to States,

local, and tribal governments; communities; families; and individual citizens as they recover from future Presidentially declared disasters. Grantees receiving an allocation of funds under this notice are encouraged to participate in this process. Tools for the unified Federal review process (UFR) process can be found here: <https://www.fema.gov/emergency-managers/practitioners/environmental-historic/review/library>.

V.A.13.d. *Historic preservation reviews*. To facilitate expedited historic preservation reviews under section 106 of the National Historic Preservation Act of 1966 (54 U.S.C. Section 306108), HUD strongly encourages grantees to allocate general administration funds to retain a qualified historic preservation professional and support the capacity of the State Historic Preservation Officer/ Tribal Historic Preservation Officer to review CDBG-DR projects. For more information on qualified historic preservation professional qualifications standards see https://www.nps.gov/history/local-law/arch_stnds_9.htm.

As appropriate, grantees may use provisions in existing Section 106 Programmatic Agreements (PAs), i.e., the HUD Addendum to the FEMA PA for Puerto Rico and the HUD Addendum to the FEMA PA for USVI, to expedite Section 106 reviews. HUD and the grantee may also participate in an interagency PA developed for the electric grid effort.

V.A.13.e. *Tiered environmental reviews*. HUD encourages grantees as Responsible Entities to develop a Tiered approach to streamline the environmental review process, as appropriate, for whenever the action plan contains a program with multiple, similar activities that will result in similar impacts. Tiering, as defined in 40 CFR 1508.1(ff), is a means of making the environmental review process more efficient by allowing parties to “eliminate repetitive discussions of the same issues, focus on the actual issues ripe for decision, and exclude from consideration issues already decided or not yet ripe at each level of environmental review” (40 CFR 1501.11). In addition, “[t]iering is appropriate when there is a requirement to evaluate a policy or proposal in the early stages of development or when site-specific analysis or mitigation

is not currently feasible and a more narrow or focused analysis is better done at a later date” (24 CFR 58.15).

A tiered review consists of two stages: A broad-level review and subsequent site-specific reviews. The broad-level review will identify and evaluate the issues that can be fully addressed and resolved, notwithstanding possible limited knowledge of the project. In addition, it must establish the standards, constraints, and processes to be followed in the site-specific reviews. As individual sites are selected for review, the site-specific reviews evaluate the remaining issues based on the policies established in the broad-level review. Together, the broad-level review and all site-specific reviews will collectively comprise a complete environmental review addressing all required elements. Public notice and the Request for Release of Funds (HUD-Form 7015.15) are processed at the broad level. However, funds cannot be spent or committed on a specific site or activity until the site-specific review has been completed for the site.

V.A.14. *Duplication of benefits.* Section 312 of the Stafford Act, as amended, generally prohibits any person, business concern, or other entity from receiving financial assistance with respect to any part of a loss resulting from a major disaster for which such person, business concern, or other entity has received financial assistance under any other program or from insurance or any other source. To comply with Section 312 and the requirement that all costs are necessary and reasonable, each grantee must ensure that each activity provides assistance to a person or entity only to the extent that the person or entity has an electrical power system improvement need that has not been fully met. Accordingly, grantees must comply with the requirements of the **Federal Register** notice published on June 20, 2019, entitled, “Updates to Duplication of Benefits Requirements Under the Stafford Act for Community Development Block Grant (CDBG) Disaster Recovery Grantees” (2019 DOB Notice) (84 FR 28836). Requirements on CDBG-DR funds and CDBG-DR grants in the 2019 DOB Notice shall apply equally to CDBG-DR funds for electrical power system improvements. All CDBG-DR grants

for electrical power system improvements under the Appropriations Act are subject to the requirement under the tenth proviso following the Community Development Fund heading of Public Law 115–123 (Declined Loans Provision) and the requirements for its implementation in the 2019 DOB Notice. The Declined Loan Provision states: “Provided further, That with respect to any such duplication of benefits, the Secretary and any grantee under this section shall not take into consideration or reduce the amount provided to any applicant for assistance from the grantee where such applicant applied for and was approved, but declined assistance related to such major disasters that occurred in 2014, 2015, 2016, and 2017 from the Small Business Administration under section 7(b) of the Small Business Act (15 U.S.C. 636(b)).”

The 2019 DOB Notice also implements requirements regarding the treatment of loans resulting from recent amendments to section 312 of the Stafford Act that apply to CDBG-DR grants for electrical power system improvements under the Appropriations Act until those provisions sunset in 2023 as described in the 2019 DOB notice. FEMA, the agency that administers the Stafford Act, has advised that pursuant to recent amendments to Section 312 of the Stafford Act in the Disaster Recovery Reform Act (P.L. 115–254, Division D), for disasters occurring between 2016 and 2021, a loan is not a duplication of other forms of financial assistance, provided that all Federal assistance is used toward a loss suffered as a result of a major disaster or emergency.

V.A.15. Use of CDBG-DR funds as match for electrical power system improvements.

Pursuant to the waiver and alternative requirement in section V.A.8. of this notice, CDBG–DR funds for electrical power system improvements, may be used to meet a matching requirement, share, or contribution for any other Federal program when used to carry out an eligible CDBG-DR activity permitted by this notice. This includes Public Assistance and other grants administered by FEMA as well as grants provided by the U.S. Army Corps of Engineers (USACE) (by law, as codified in the HCDA as a note to 42 U.S.C. 5305, the maximum amount of CDBG-DR funds that may be contributed to a project funded by the USACE is \$250,000).

Grantees may only use CDBG-DR funds allocated pursuant to this notice to meet the match requirement of an activity that meets the definition of an electrical power system improvement and other requirements of this notice. In considering the use of CDBG-DR funds as match, grantees are further advised that the Appropriations Act prohibits the use of CDBG-DR funds for any activity that is reimbursable by, or for which funds are also made available by FEMA or the USACE. The Department notes the substantial amount of FEMA Public Assistance funding that has also been committed to electrical power system improvements. Accordingly, grantees are advised that when CDBG-DR funds for electrical power system improvements are used in combination with FEMA or USACE funds, the grantee must document that such CDBG-DR funds were not used to pay for costs that could be charged to the FEMA or USACE award (although CDBG-DR funds may be used for CDBG-DR eligible costs of the other Federal agency-funded award up to the amount required for the non-Federal match and for costs that cannot be charged to the FEMA or USACE award). Statutory order of assistance provisions also prohibit the use of CDBG-DR funds to “front” costs that will later be reimbursed with FEMA or USACE funds. CDBG-DR funds may be used for the costs of compliance with CDBG-DR requirements that cannot be charged to the FEMA or USACE grant. The grantee shall be required to record in DRGR the expenditure of funds for the activity for which the match is provided and to indicate that the funds were used to meet a non-Federal match share requirement.

V.A.16. *Procurement.* Grantees must adhere to the following procurement regulation and additional alternative requirement: Grantees must comply with the procurement requirements at 24 CFR 570.489(g) and evaluate the cost or price of the product or service. Grantees shall establish requirements for procurement policies and procedures for subrecipients based on full and open competition consistent with the requirements of 24 CFR 570.489(g), and shall require an evaluation of the cost or price of the product or service (including professional services such as engineering).

Additionally, if the agency of the grantee that is designated as the administering agency chooses to provide funding to another agency of the grantee, the administering agency must specify in its procurement policies and procedures whether the agency implementing the program must follow the procurement policies and procedures that the administering agency is subject to, or whether the agency must follow the same policies and procedures to which other subrecipients are subject.

V.A.17. *Timely distribution of funds.* The Appropriations Act, as amended, requires that funds provided under the Act be expended within two years of the date that HUD obligates funds to a grantee and authorizes the Office of Management and Budget (OMB) to provide a waiver of this requirement. OMB has provided HUD with a waiver of this two-year expenditure requirement. HUD is also waiving the provisions at 24 CFR 570.494 and 24 CFR 570.902 regarding timely distribution and expenditure of funds and establishing an alternative requirement, providing that each grantee must expend one hundred percent of its allocation within six years of HUD's execution of the grant agreement absent a waiver and alternative requirement as requested by the grantee and approved by HUD. A grantee request for a waiver of an expenditure deadline must document the grantee's progress in the implementation of the grant; outline the long-term nature and complexity of the electrical power system improvement programs and projects that have yet to be fully implemented; and propose an alternative deadline for the expenditure of the funds.

V.A.18. *Program income waiver and alternative requirement.* The Department is waiving applicable program income rules at 42 U.S.C. 5304(j) and 24 CFR 570.489(e), only to the extent necessary to provide additional flexibility to grantees described below. The alternative requirements include requirements regarding the use of program income received before and after grant close out and address revolving loan funds.

V.A.18.a. *Definition of program income.* For purposes of this notice, "program income" is defined as gross income generated from the use of CDBG-DR funds, except as provided in

V.A.18.a(iv) and V.A.18.b. and received by a grantee or a subrecipient (including Indian tribes).

When income is generated by an activity that is only partially assisted with CDBG-DR funds, the income shall be prorated to reflect the percentage of CDBG-DR funds used (e.g., a single loan supported by CDBG-DR funds and other funds; a single parcel of land purchased with CDBG funds and other funds). Program income includes, but is not limited to, the following:

(i) Proceeds from the disposition by sale or long-term lease of real property purchased or improved with CDBG-DR funds.

(ii) Proceeds from the disposition of equipment purchased with CDBG-DR funds.

(iii) Gross income from the use or rental of real or personal property acquired by a State, local government, or subrecipient thereof with CDBG-DR funds, less costs incidental to generation of the income (i.e., net income).

(iv) Net income from the use or rental of real property owned by a State, local government, or subrecipient thereof, that was constructed or improved with CDBG-DR funds.

(v) Payments of principal and interest on loans made using CDBG-DR funds.

(vi) Proceeds from the sale of loans made with CDBG-DR funds.

(vii) Proceeds from the sale of obligations secured by loans made with CDBG-DR funds.

(viii) Interest earned on program income pending disposition of the income, including interest earned on funds held in a revolving fund account.

(ix) Funds collected through special assessments made against nonresidential properties and properties owned and occupied by households not low- and moderate-income, where the special assessments are used to recover all or part of the CDBG-DR portion of a public improvement.

(x) Gross income paid to a state, local government, or a subrecipient thereof, from the ownership interest in a for-profit entity in which the income is in return for the provision of CDBG-DR assistance.

V.A.18.b. *Program income –does not include:*

(i) The total amount of funds that is less than \$35,000 received in a single year and retained by a state, local government, or a subrecipient thereof.

V.A.18.c. *Retention of program income.* Grantees may permit a local government that receives or will receive program income to retain the program income but are not required to do so.

V.A.18.d. *Program income—use, close out, and transfer.*

(i) Program income received (and retained, if applicable) before or after close out of the grant that generated the program income, and used to continue disaster recovery activities, is treated as additional CDBG-DR funds subject to the requirements of this notice and must be used in accordance with the grantee's action plan for disaster recovery. To the maximum extent feasible, program income shall be used or distributed before additional withdrawals from the U.S. Treasury are made, except as provided V.A.18.e. below.

(ii) In addition to the regulations dealing with program income found at 24 CFR 570.489(e) and 570.504(c) (for subrecipients), as modified by the waivers and alternative requirements in this paragraph V.A.18., the following rule applies:

(1) All program income received from CDBG-DR-funded electrical power system improvements under this notice, including proceeds from the disposition by sale or long-term lease of any component of the electrical power system, remain subject to the requirements of this notice and shall be used only for electrical power system improvements. Program income, however, received after grant closeout pursuant to this notice, may be held in trust by the grantee for the exclusive benefit of low-income residents for the purpose of reducing electricity costs to those residents through a subsidized electricity rate that is below that provided to other residents, or through electricity rates that are lower than was previously charged prior to completion of the electrical power system improvements.

V.A.18.e. *Revolving funds.* A grantee may establish revolving funds to carry out specific, identified activities. Grantees may also establish a revolving fund to distribute funds to local governments or tribes to carry out specific, identified activities. A revolving fund, for this purpose, is a separate fund (with a set of accounts that are independent of other program accounts) established to carry out specific activities. These activities must generate payments used to support similar activities going forward. These payments to the revolving fund are program income and must be substantially disbursed from the revolving fund before additional grant funds are drawn from the U.S. Treasury for payments that could be funded from the revolving fund. Such program income is not required to be disbursed for nonrevolving fund activities. A revolving fund established by a CDBG-DR grantee shall not be directly funded or capitalized with CDBG-DR grant funds, pursuant to 24 CFR 570.489(f)(3).

V.A.19. *Review of continuing capacity to carry out CDBG-funded activities in a timely manner.* If HUD determines that the grantee has not carried out its CDBG-DR activities and certifications in accordance with the requirements for CDBG-DR funds, HUD will undertake a further review to determine whether or not the grantee has the continuing capacity to carry out its activities in a timely manner. In making the determination, the Department will consider the nature and extent of the recipient's performance deficiencies, types of corrective actions the recipient has undertaken, and the success or likely success of such actions, and apply the corrective and remedial actions specified in section V.A.20. below.

V.A.20. *Corrective and remedial actions.* To ensure compliance with the requirements of the Appropriations Act and to effectively administer CDBG-DR grants in a manner that facilitates resilience, particularly the alternative requirements permitting the grantee to act directly to carry out eligible activities, HUD is waiving 42 U.S.C. 5304(e) to the extent necessary to establish the following alternative requirement: HUD may undertake corrective and remedial actions for the grantee in accordance with the authorities applicable to entitlement grantees in subpart O (including corrective and remedial actions in 24 CFR 570.910, 570.911, and 570.913)

or under subpart I of the CDBG regulations at 24 CFR part 570. In response to a deficiency, HUD may issue a warning letter followed by a corrective action plan that may include a management plan which assigns responsibility for further administration of the grant to specific entities or persons. Failure to comply with a corrective action may result in the termination, reduction, or limitation of payments to a grantee receiving CDBG-DR funds.

V.A.21. *Noncompliance and grant conditions.* Failure to implement a CDBG-DR grant in accordance with a grantee's approved financial certification, the capacity and implementation plan, the action plan, as well as grant conditions established by the Department or other applicable requirements, shall constitute a performance deficiency. To correct that deficiency, the Department may exercise any of the corrective and remedial actions authorized in subpart O of the CDBG regulations (including corrective and remedial actions in 24 CFR 570.910, 570.911, and 570.913) or under subpart I of the CDBG regulations at 24 CFR part 570. Grantees are advised that such remedies may include suspension of administrative funds as well as a reduction of the grantee's CDBG-DR grant or its annual CDBG grant.

The Department may also establish special grant conditions for individual CDBG-DR grants to mitigate the risks posed by the grantee, including risks related to the grantee's capacity to carry out the specific programs and projects proposed in its action plan. These conditions will be designed to provide additional assurances that electrical power system improvements are implemented in a manner to prevent waste, fraud, and abuse and that the funded electrical power system improvements are effectively operated and maintained.

V.A.22. *Reduction, withdrawal, or adjustment of a grant, or other appropriate action.* Prior to a reduction, withdrawal, or adjustment of a CDBG-DR grant, or other actions taken pursuant to this section, the recipient shall be notified of the proposed action and be given an opportunity for an informal consultation. Consistent with the procedures described for CDBG-DR funds, the Department may adjust, reduce, or withdraw the CDBG-DR grant or take other actions as appropriate, except for funds that have been expended for eligible, approved activities.

V.A.23. *Federal accessibility requirements.* Grantees are reminded that the use of CDBG-DR funds must meet accessibility standards, including, but not limited to, the Fair Housing Act, Section 504 of the Rehabilitation Act, and Titles II and III of the Americans with Disabilities Act. Grantees should review the Fair Housing Act Accessibility Guidelines at https://www.hud.gov/program_offices/fair_housing_equal_opp/disabilities/fhefhag, the Uniform Federal Accessibility Standards (UFAS) at <https://www.hudexchange.info/resource/796/ufas-accessibility-checklist/>, and the 2010 ADA Standards. The HUD notice on “Nondiscrimination on the Basis of Disability in Federally Assisted Programs and Activities,” 79 FR 29671 (May 23, 2014), explains when HUD recipients can use 2010 ADA Standards with exceptions, as an alternative to UFAS to comply with Section 504.

V.B. Infrastructure and Other Nonresidential Structures.

V.B.1. *Construction standard alternative requirement for elevation of nonresidential structures.* Nonresidential structures must be elevated to the standards described in this paragraph or floodproofed, in accordance with FEMA floodproofing standards at 44 CFR 60.3(c)(3)(ii) or successor standard, up to at least two feet above the 100-year (or 1 percent annual chance) floodplain. In addition, structural or nonstructural methods may be used to reduce or prevent damage, and the structure may be designed to adapt to, withstand and rapidly recover from a flood event. All Critical Actions, as defined at 24 CFR 55.2(b)(3), within the 500-year (or 0.2 percent annual chance) floodplain must be elevated or floodproofed (in accordance with the FEMA standards) to the higher of the 500-year floodplain elevation or three feet above the 100-year floodplain elevation. If the 500-year floodplain or elevation is unavailable, and the Critical Action is in the 100-year floodplain, then the structure must be elevated or floodproofed at least three feet above the 100-year floodplain elevation. Critical Actions are defined as an “activity for which even a slight chance of flooding would be too great, because such flooding might result in loss of life, injury to persons or damage to property.” For

example, Critical Actions include principal utility lines, hospitals, nursing homes, police stations, and fire stations.

Grantee may, in the alternative, use a FEMA-approved flood standard when each of the following conditions is in place: (i) CDBG-DR funds are used as the non-federal match for FEMA assistance; (ii) the FEMA-assisted activity, for which CDBG-DR funds will be used as match, commenced prior to HUD's obligation of CDBG-DR funds to the grantee; and (iii) the grantee has determined and demonstrated with records in the activity file that implementation costs of the required CDBG-DR elevation or flood proofing up to two feet (or three feet for critical actions) is not reasonable as that term is defined in the applicable cost principles at 2 CFR 200.404. Under this provision and criterion (ii) above, HUD considers the FEMA-assisted activity to have "commenced" on the date on which the HUD grantee has incurred a project cost that has been or will be charged to an approved FEMA PW. This may include pre-award costs if FEMA determines that the costs are eligible.

Non-structural infrastructure must be resilient to flooding. The vertical flood elevation establishes the level to which a facility must be resilient. This may include using structural or nonstructural methods to reduce or prevent damage; or, designing it to withstand and rapidly recover from a flood event. In selecting the appropriate resilience approach, grantees should consider several factors such as flood depth, velocity, rate of rise of floodwater, duration of floodwater, erosion, subsidence, the function or use and type of facility, and other factors.

Applicable state and local codes and standards for floodplain management that exceed these requirements, including elevation, setbacks, and cumulative substantial damage requirements, will be followed. Grantees are reminded that the elevation of structures must comply with all applicable Federal accessibility standards outlined in section V.A.22.

Grantees, recipients, and subrecipients must implement procedures and mechanisms to ensure that assisted property owners comply with all flood insurance requirements, prior to providing assistance. For additional information, please consult with the field environmental

officer in the local HUD field office or review the guidance on flood insurance requirements on HUD's website.

V.B.2. Limitation of use of eminent domain. CDBG-DR funds may not be used to support any Federal, state, or local projects that seek to use the power of eminent domain, unless eminent domain is employed only for a public use. For purposes of this paragraph, public use shall not be construed to include economic development that primarily benefits private entities. Any use of funds for mass transit, railroad, airport, seaport or highway projects, as well as utility projects which benefit or serve the general public (including energy related, communication-related, water related, and wastewater-related infrastructure), other structures designated for use by the general public or which have other common-carrier or public-utility functions that serve the general public and are subject to regulation and oversight by the government, and projects for the removal of an immediate threat to public health and safety or brownfields as defined in the Small Business Liability Relief and Brownfields Revitalization Act (P.L. 107–118) shall be considered a public use for purposes of eminent domain.

V.B.3. Refinancing or payment of debt for acquisition. Pursuant to the definition of electrical power system improvements established in section V.A.8.a.(ii) of this notice, the refinancing or paying down of debt shall be eligible only for the purpose of acquiring a facility only upon HUD's consultation with the federal agencies that comprise the TCT, and a demonstration by the grantee that such acquisition is critical to the improvement of the grantee's electrical power system and to long term financial stability of the grantee's public utility and will allow the grantee to meet a low- and moderate-income national objective as established by this notice.

V.B.4. HUD consultation on use of other CDBG-DR and CDBG-MIT funds. The unprecedented levels of HUD and other federal funding for disaster recovery and mitigation provided to Puerto Rico and the USVI and the specialized nature of the electrical power system improvement activity funded pursuant to this notice, warrant additional consultation by HUD

with its federal partners when a grantee proposes to use other CDBG-DR funds or CDBG-MIT funds for electrical power system improvement to ensure that all funds are used for necessary expenses, as required by the Appropriations Act. Accordingly, grantees are prohibited from using CDBG-DR funds previously obligated for recovery from a 2017 disaster or CDBG-MIT funds for activities to enhance or improve electrical power systems until HUD properly consults and coordinates with its Federal members through the TCT on other Federally funded investments for this purpose. This limitation includes a prohibition on the use of CDBG-DR or CDBG-MIT funds to meet the matching requirement, share, or contribution for any Federally funded project that is providing funding for electrical power systems until HUD completes its consultation. HUD will inform the grantee when its consultation has been completed.

V.B.5. *Prohibiting assistance to private utilities.* Funds made available under this notice may not be used to assist privately-owned utilities. A CDBG-DR grantee may seek a waiver of this prohibition when it has identified an electrical power system improvement project that is a priority and where assistance to a privately-owned utility is demonstrated to be necessary to implement the project.

V.C. Certifications and Collection of Information

V.C.1. *Certifications' waiver and alternative requirement.* 24 CFR 91.325 is waived. Each grantee receiving a direct allocation under this notice must make the following certifications with its action plan:

- a. The grantee certifies that it has in effect and is following a residential anti-displacement and relocation assistance plan in connection with any activity assisted with funding under the CDBG program.
- b. The grantee certifies its compliance with restrictions on lobbying required by 24 CFR part 87, together with disclosure forms, if required by part 87.
- c. The grantee certifies that the action plan for disaster recovery is authorized under State and local law (as applicable) and that the grantee, and any entity or entities designated by the

grantee, and any contractor, subrecipient, or designated public agency carrying out an activity with CDBG–DR funds, possess(es) the legal authority to carry out the program for which it is seeking funding, in accordance with applicable HUD regulations and this notice. The grantee certifies that activities to be undertaken with funds under this notice are consistent with its action plan.

d. The grantee certifies that it will comply with the acquisition and relocation requirements of the URA, as amended, and implementing regulations at 49 CFR part 24, except where waivers or alternative requirements are provided for in this notice.

e. The grantee certifies that it will comply with section 3 of the Housing and Urban Development Act of 1968 (12 U.S.C. 1701u) and implementing regulations at 24 CFR part 135.

f. The grantee certifies that it is following a detailed citizen participation plan that satisfies the requirements of 24 CFR 91.115 (except as provided for in notices providing waivers and alternative requirements for this grant). Also, each local government receiving assistance from a State grantee must follow a detailed citizen participation plan that satisfies the requirements of 24 CFR 570.486 (except as provided for in notices providing waivers and alternative requirements for this grant).

g. State grantee certifies that it has consulted with affected local governments in counties designated in covered major disaster declarations in the non-entitlement, entitlement, and tribal areas of the State in determining the uses of funds, including the method of distribution of funding, or activities carried out directly by the State.

h. The grantee certifies that it is complying with each of the following criteria:

(1) Funds will be used solely for necessary expenses of electrical power system enhancements and improvements in the most impacted and distressed areas as defined by HUD in section II of this notice.

(2) With respect to activities expected to be assisted with CDBG-DR funds, the action plan has been developed so as to give the maximum feasible priority to activities that will benefit low- and moderate-income families.

(3) The aggregate use of CDBG-DR funds shall principally benefit low- and moderate-income families in a manner that ensures that at least 70 percent (or another percentage permitted by HUD in a waiver published in an applicable **Federal Register** notice) of the grant amount is expended for activities that benefit such persons.

(4) The grantee will not attempt to recover any capital costs of public improvements assisted with CDBG-DR grant funds, by assessing any amount against properties owned and occupied by persons of low- and moderate-income, including any fee charged or assessment made as a condition of obtaining access to such public improvements, unless: (a) disaster recovery grant funds are used to pay the proportion of such fee or assessment that relates to the capital costs of such public improvements that are financed from revenue sources other than under this title; or (b) for purposes of assessing any amount against properties owned and occupied by persons of moderate income, the grantee certifies to the Secretary that it lacks sufficient CDBG funds (in any form) to comply with the requirements of clause (a).

i. The grantee certifies that the grant will be conducted and administered in conformity with title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000d), the Fair Housing Act (42 U.S.C. 3601-3619), and implementing regulations, and that it will affirmatively further fair housing. An Indian tribe grantee certifies that the grant will be conducted and administered in conformity with the Indian Civil Rights Act.

j. The grantee certifies that it has adopted and is enforcing the following policies, and, in addition, must certify that they will require local governments that receive grant funds to certify that they have adopted and are enforcing:

(1) A policy prohibiting the use of excessive force by law enforcement agencies within its jurisdiction against any individuals engaged in nonviolent civil rights demonstrations; and

(2) A policy of enforcing applicable State and local laws against physically barring entrance to or exit from a facility or location that is the subject of such nonviolent civil rights demonstrations within its jurisdiction.

k. The grantee certifies that it (and any subrecipient or administering entity) currently has or will develop and maintain the capacity to carry out disaster recovery activities in a timely manner and that the grantee has reviewed the requirements of this notice. The grantee certifies to the accuracy of its previously submitted CDBG-MIT Financial Management and Grant Compliance certification checklist and addendums, or other recent certification submission, if approved by HUD, and related supporting documentation referenced at V.A.1.a. in this notice and Implementation Plan and Capacity Assessment and related submissions to HUD referenced at V.A.1.b. of this notice.

l. The grantee certifies that it will not use CDBG-DR funds for any activity in an area identified as flood prone for land use or hazard mitigation planning purposes by the State, local, or tribal government or delineated as a Special Flood Hazard Area (or 100-year floodplain) in FEMA's most current flood advisory maps, unless it also ensures that the action is designed or modified to minimize harm to or within the floodplain, in accordance with Executive Order 11988 and 24 CFR part 55. The relevant data source for this provision is the State, local, and tribal government land use regulations and current hazard mitigation plans and the latest-issued FEMA data or guidance, which includes advisory data (such as Advisory Base Flood Elevations) or preliminary and final Flood Insurance Rate Maps.

m. The grantee certifies that its activities concerning lead-based paint will comply with the requirements of 24 CFR part 35, subparts A, B, J, K, and R.

n. The grantee certifies that it will comply with environmental requirements at 24 CFR part 58.

o. The grantee certifies that it will comply with applicable laws.

Warning: Any person who knowingly makes a false claim or statement to HUD may be subject to civil or criminal penalties under 18 U.S.C. 287, 1001 and 31 U.S.C. 3729.

VI. Duration of Funding

The Appropriations Act makes the funds available for obligation by HUD until expended. This notice requires each grantee to expend 100 percent of its CDBG–DR grant on eligible activities within 6 years of HUD’s obligation of funds under P.L. 115–123 for electrical power system improvements. HUD may extend the period of performance administratively, if good cause for such an extension exists at that time, as requested by the grantee, and approved by HUD. When the period of performance has ended, HUD will close out the grant and any remaining funds not expended by the grantee on appropriate programmatic purposes will be recaptured by HUD.

VII. Catalog of Federal Domestic Assistance

The Catalog of Federal Domestic Assistance numbers for the grants under this notice are as follows: 14.218 and 14.228.

VIII. Finding of No Significant Impact

A Finding of No Significant Impact (FONSI) with respect to the environment has been made in accordance with HUD regulations at 24 CFR part 50, which implement section 102(2)(C) of the National Environmental Policy Act of 1969 (42 U.S.C. 4332(2)(C)). The FONSI is available for inspection on HUD's website and in-person for public inspection between 8 a.m. and 5 p.m. weekdays in the Regulations Division, Office of General Counsel, Department of Housing and Urban Development, 451 7th Street, SW, Room 10276, Washington, DC 20410-0500. Due to security measures at the HUD Headquarters building, an advance appointment to review the docket file must be scheduled by calling the Regulations Division at 202-708-3055 (this is not a toll-free number). Hearing- or speech-impaired individuals may access this number through TTY by calling the Federal Relay Service at 800-877-8339 (this is a toll-free number).

James Arthur Jemison II,

Principal Deputy Assistant Secretary for

Community Planning and Development.

[BILLING CODE: 4210-67]

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